# SECOND REPORT

OF THE

# COMMISSIONERS TO REVISE THE LAWS

FOR THE

# Assessment and Collection of Taxes

IN THE

# STATE OF NEW YORK,

## With a Code of Laws Relative to Assessment and Taxation.

DAVID A. WELLS,
EDWIN DODGE,
GEORGE W. CUYLER, } *Commissioners.*

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"In order that the greater part of the members of any society should contribute to the public revenue, in proportion to their respective expense, it does not seem necessary that every single article of that expense should be taxed."—ADAM SMITH.

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STATE OF NEW YORK.

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## REPORT

OF THE

## COMMISSIONERS TO REVISE THE STATUTES RELATIVE TO TAXATION.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *February 8th*, 1872.

*To the Legislature:*

I transmit, herewith, the draft of a code of laws relating to the assessment of taxes in the State of New York, prepared by the "Commissioners on Taxation," under an act of the Legislature, passed May, 1871, together with their report relating to the same.

Having in my annual message urged upon you an early and considerate examination of the system of taxation presented by the commissioners, it is unnecessary for me to do more now than renew that recommendation; and at the same time to express my satisfaction with the labor and care which has manifestly been expended by the commissioners in their conscientious effort to arrive at a uniform, equitable and productive system of tax legislation.

JOHN T. HOFFMAN.

# REPORT.

ALBANY, *February*, 1872.

SIR.—In pursuance of an act of the Legislature of the State of New York, passed April 20th, 1870, the undersigned were appointed by the Governor, commissioners "to revise the laws for the assessment and collection of taxes," and in discharge of their duties, they submitted in February, 1871, a report, embodying a review of the existing system of State or local taxation; an outline of a new system; and reasons in detail, which seemed to the commissioners sufficient to warrant them in recommending such new system to the Legislature and the people of New York for adoption.

As the proposed new system of local taxation involved a radical change in existing laws, the commissioners did not ask or expect any immediate action; but preferred, and with the concurrence of the Executive, recommended that the whole subject should be laid over for at least a year, in order to afford time to the people of the State to consider the nature and the bearing of the facts submitted; and to decide whether they preferred to retain the present system—annually becoming more ineffective, unjust and unequal—or adopt the system of the commissioners, as likely to prove remedial for defects in existing laws, which have now become a matter of almost general acknowledgment.

In this view the Legislature of 1871 so far concurred, that no official action was taken, further than to order the printing of the report for distribution to the people of the State of New York, and to the Legislatures of other States, from whom application for copies were made,* and to authorize the commissioners to prepare and submit to the Legislature of 1872, a code, framed in accordance with their recommendation. This authorization, passed May, 1871, reads as follows: "*And the said commission are directed to report, for the considera-*

* Besides the edition of the report of the commissioners ordered by the Legislature, two other editions have been printed and issued by private parties; one by Messrs. Harper & Bros., of New York, with notes additional to the official report; and another in England, the last with a preface, under the direction of the Cobden Club, of London, for circulation or gratuitous distribution among the people of Great Britain.

*tion of the Legislature, at its next session, a draft of a tax code or law, with estimates of expenses and collection thereunder.*"

In accordance, therefore, with the instructions given in the act as above quoted, the commissioners have now the honor to submit the draft of a code of laws for the assessment of taxes in the State of New York; meaning thereby State, county, city and town taxes, and would respectfully recommend the same to the Legislature and people of the State of New York for examination and adoption.

But, as prefatory to so doing, they desire again to submit in brief *the reasons of their recommendations; an easily understood analysis of the principles upon which the code prepared by them has been founded; and a prospective exhibit of its method of working;* and this more especially, because, notwithstanding the extensive circulation by the Legislature of the former report, it seems certain that a very large portion of the community has, as yet, no clear and definite comprehension of the nature of the reforms proposed by the commissioners, and of the intimate relation which a system of taxation sustains to the growth and development of a State, and to the mutual interests, comfort and happiness of each individual of its population.

## THE PROBLEM INVOLVED.

The problem involved in any system of taxation is the raising of money from the people or property of a State or community, for defraying the expenditures incident to the maintenance of government, and for the general organization and well-being of society. The command of revenue being furthermore absolutely essential to the existence of government, the power of every complete sovereignty to compel contributions, or as we term it, "*to tax*,"* is generally held to be unlimited, and only restricted against abuse by the fundamental structure of the government itself.†

## LIMITATIONS OF THE TAXING PROCESS OF THE STATES.

The separate States of the Federal union not being, however, absolutely sovereign, are limited in their exercise of the taxing power by certain conditions, expressed or implied in the constitution of the

* A tax is a contribution imposed by government on individuals for the service of the State. It is distinguished from a subsidy as being certain and orderly, which is shown in its derivation from the Greek *taxis, ordo*, order or arrangement. (*Jacob. Law Dic., Bouvier Law Dic.*)

† "The power to tax rests upon necessity, and is inherent in every sovereignty. No constitutional government can exist without it; and no arbitrary government, without regular and steady taxation, could be anything but an oppressive and vexatious despotism, since the only alternative to taxation would be a forced extortion for the needs of government from such persons or objects as the ones in power might select as victims." (*Cooley's Constitutional Limitations.*)

greater sovereignty, namely, that of the United States; as, for example, in respect to agencies or instrumentalities of the Federal government; imported goods in original packages in the hands of the merchant importer; exports to foreign countries; inter-State instruments; goods *in transitu*, and the like; while, on the other hand, the exercise of the taxing power by the Federal government in respect to distinctively State agencies has been declared by the Federal courts to be inconsistent with the principles upon which the federation of the States has been established.

But above all constitutional or other artificial restrictions, each State or community is virtually under the obligations of a higher law to establish and maintain a tax system within the range of its powers, which will insure *justice or equality, certainty, efficiency and economy;* for the reason that it is contrary to the material interests of each such State or community, and contrary to the morality of its people, to do otherwise.

(*The discussion of the province and scope of taxation in general; of the limitations of the taxing powers of the Federal and State Governments; of the effect of the Fourteenth Amendment to the Constitution of the United States in abridging the control of the States over the property of their citizens; and of certain recent legal decisions; being a separate department of the subject under consideration, and one not more pertinent to New York than to all the other States, has been transferred to a supplement to this report, to which attention is requested.*)

## SYSTEM OF LOCAL TAXATION IN NEW YORK COMPARED WITH THE TAX SYSTEMS OF OTHER STATES.

With this brief review of the nature, necessity, and limitation of the powers of taxation as exercised by the States, let us next inquire as to the actual condition of affairs in respect to taxation in the State of New York, and in the other States, so far as the latter furnish experience pertinent and illustrative of the special subject of our inquiry.

And first, we find that the system of taxation existing in New York, in common with most of the other States, has been based and built up on the theory, that the raising of revenue to meet public expenditures, according to the three recognized fundamental conditions of taxation — certainty, justice or equality, and economy — can be best accomplished by subjecting *all property*, real and personal, within the jurisdiction of the State, to ascertainment, valuation, and

assessment. New York, however, by her Legislature and her courts, has held, in accordance with what has seemed to these authorities to be the dictates of justice and common sense, that the visible, tangible property of her citizens, situated beyond her territory, is beyond her jurisdiction, and is, therefore, not liable to State assessment and taxation; and recognizing further the principle, that an individual should be taxed on what he *owns*, and not on what he *owes*, has allowed indebtedness in part to offset or diminish the valuation of assets.

### SYSTEMS OF LOCAL TAXATION IN OTHER STATES.

Massachusetts, on the other hand, basing her tax code and practice upon the same assumption as New York, namely, the desirability of taxing *all* property of her citizens, endeavors to carry its application to a much greater extreme; inasmuch as this State claims the right, and practically exercises the power to assess her citizens for not only so much of their personal property as is specifically within her limits and control, but also for so much as is undeniably beyond her territory, and, therefore, inferentially beyond her sovereignty and jurisdiction. The tax laws of Massachusetts furthermore, do not allow indebtedness to offset or diminish tangible property, consigned goods only excepted.

In Pennsylvania, the system of local taxation is entirely different from that of either New York or Massachusetts, and far more liberal than the system of any of the other States; inasmuch as in that State, personal property is either wholly exempt from taxation, or is taxed to so small an extent, in comparison with New York and Massachusetts, as to practically amount to exemption. We have, therefore, in the three States of New York, Massachusetts, and Pennsylvania, the types, or representatives of the various systems of local taxation as they exist in the United States.

### RESULTS OF EXPERIENCE.

The results of the experience of these three systems may be fairly stated as follows: In Massachusetts, under her existing system, the revenue collected by taxation is larger in proportion to her population than in any other State, and larger, probably than in any other country; amounting in 1870 to $14.35 *per capita*, as compared with $11.50 *per capita* in New York. The system under which this result is effected is characterized by nearly all the citizens of that State with whom the commissioners have come in contact, as in the highest degree arbitrary, unequal, unjust, and in respect to personal property,

notoriously ineffective. In the city of Boston, where, through the high character of officials and the permanent tenure of office, the laws are executed more efficiently than elsewhere, thirty per cent or more of this latter class of property *is acknowledged* to escape assessment, while in the remainder of the State the proportion is known to be much greater.

In Pennsylvania, under her existing system of local taxation, less dissatisfaction is probably expressed, and less trouble reported by officials, than in any other State. Real estate is not regarded as unduly burdened; rents in her large cities are comparatively low; while, under the inducements offered by liberal legislation, population and wealth are very rapidly increasing;—the gain in population from 1860 to 1870 having been 21.18 per cent, as compared with 12.94 per cent for New York.

In the case of New York, no one, either officials or citizens, is satisfied with the existing system or its administration; and so apparent, moreover, are its defects, that the necessity of reform is almost universally acknowledged. But the commissioners, who have made the system a matter of special study and inquiry, go further, and unqualifiedly assert that, as it exists to-day, it is more imperfect in theory and defective in administration than almost any system that has ever existed, and that its longer recognition and continuance is alike prejudicial to the material interest of the State and the morality of its people.*

In their previous report the commissioners collected and presented a large amount of evidence illustrative of the actual condition of affairs; but now, with another year's experience, and for the purpose of fully demonstrating the truth of their assertions, they would again briefly ask attention to the subject.

### Actual Condition of the New York System.

The property of New York, made subject to taxation, divides itself into two classes; *real* and *personal*.

Real Property, embracing, according to the usual acceptation of the term, lands and buildings, being visible and tangible, presents no inherent difficulty in the way of ascertainment, valuation and assessment. The New York system of taxation in respect to these

* If this judgment may seem harsh, reference to the records of the constitutional convention of 1867-8 is only necessary to show that more severe language is made use of in the debates in respect to the system than any now employed by the commissioners; that of one of its leading members, for example, being as follows: "I insist that a people cannot prosper whose officers either work or tell lies. There is not an assessment roll now made out in this State that does not both work and tell lies."

objects might, therefore, be reasonably supposed to work with some degree of uniformity and equality; but so far from this being the case, it would be difficult, nay, probably impossible, to find any two contiguous towns, cities or counties in the State, in which the valuation of such property approximates in any degree to uniformity. So far as the commissioners can ascertain, the average aggregate valuation varies from twenty per cent of actual value as a minimum, to fifty per cent, as a maximum; with a probable total average for the whole State of a rate not in excess of forty per cent. The lowest valuations, furthermore, do not, as might be supposed, occur in the poorest and most sparsely settled counties of the State, but rather in the richest and most densely populated; and it is also curious to note, that comparing the real estate valuations of the several counties of the State in the years 1860 and 1870, with the census returns of their population at the same periods, it will be found that some counties which have increased their population and railroad facilities, have decreased their valuations, while other counties which have actually diminished in population, have increased their valuations.

The increase in the assessed valuation of the real property of the entire State for the ten years, from 1861 to 1870 inclusive, was forty-seven and a half per cent; but deducting the valuations of New York and Kings counties, the increase was only eight and a half per cent, although the increase in the population of these two sections, during the same period, was not very unequal; the increase in New York and Kings counties having been 269,722; and for the remainder of the State 232,302. Now as the law of the State is clear and explicit, that the valuations shall be uniform, it is evident that the law in this respect has become a dead letter and wholly inoperative.

### PERSONAL PROPERTY.

But if such be the inequality and illegality of the methods of taxing *real property* at present followed in the State of New York, the results which have attended the attempts to tax *personal property* under the same system are infinitely more farcical and disgraceful. The evidence of this failure is most conclusive, and the reasons why, under the existing system, nothing but failure in respect to the taxing of this description of property can be anticipated, are of a character that admit of being readily understood and verified. Thus the total equalized valuation of all the property of the State of New York for the year 1871–72 is $2,076,454,000, of which but little more than

one-fifth (21.48 per cent), or $445,918,000, was returned under the head of personal property.

In their previous report the commissioners presented evidence tending to show that the aggregate value of the real property of the State and the aggregate value of its personal property closely approximated. They furthermore presented a schedule of property of the class *personal* within the State, founded on exact data, or careful estimate, whose aggregate amount nearly equaled in value the entire amount of all the property of the State, real and personal, returned for taxation during the year 1870–71. They would also recall the opinion authoritatively expressed in the constitutional convention of 1868, that *thirty* citizens of the State could be named whose aggregate wealth (mainly personal) was very considerably in excess of the valuation for that year of all the personal property of the entire State. But without again entering into details, the commissioners would now say, that another year's experience has led them to this general conclusion, that the authorities of the State, under a law (professedly executed) requiring the assessment of *all* personal property at its full value, do not in fact succeed in assessing a proportion equal to *thirty* per cent of the recognized *low* valuation of the real estate; or more than *fifteen* per cent of the *real and true* value of all such property immediately located within the State, and as such subject to the State authority. So much in proof of the evidence of the failure of the existing laws relative to local taxation to do what they were designed and purport to do. So much also in evidence that the existing system of local taxation, by its own gravitation and surrounding influences, has, with the exception of incorporated capital, practically come down to a tax upon real estate.

### CONDITIONS OF FAILURE INSEPARABLE FROM THE EXISTING SYSTEM.

The reasons why nothing but failure in respect to the valuation and assessment of personal property under the existing system can be anticipated, are in the main as follows:

In the first place, much of the property termed "personal," and which under the system operative in New York, and most of the other States, it is made obligatory on the assessors to value and assess, is incorporeal and invisible, easy of transfer and concealment, not admitting of valuation by comparison with any common standard, and the *situs* or locality of which for purposes of assessment and taxation, involves some of the oldest, most controverted, and yet unsettled questions of law. Of such a character are all negotiable

instruments, *i. e.*, national, state, municipal, and corporate bonds; written obligations of indebtedness on the part of individuals; book accounts, annuities, money at interest, cash on hand, and the like, the whole constituting by far the largest proportion of the so-called personal property of the country.

It is obvious, therefore, that the law contemplates the doing of an act, namely, the valuing and assessing of that which is invisible and incorporeal, which cannot be done without the fullest coöperation, through communication of information, of the tax-payer himself; and yet for the imparting of which, the two most powerful influences that can control human action, namely, love of gain, and the desire to avoid publicity in respect to one's private affairs, coöperate to oppose.

And in the case also, of much of the so-called "personal property" that is visible and tangible, as furniture, books, works of art, jewelry, musical instruments, and the like, it is clear that its valuation with any approximation to fairness, must be not only the work of time, but must require an amount of experience rarely in the possession of any one individual.

Wherever, therefore, a system contemplating the taxation of personal property, generally, has been projected, its authors have been led as it were by instinct, to the conclusion, that its execution with any degree of effectiveness, must depend upon the employment of extraordinary and arbitrary measures. Thus, the old Romans, who first established the taxation of personal property at the period of the decadence of the empire, and who were not troubled with any restrictions of a constitutional character, or any very nice notions about personal liberty or general morality, clearly perceived this, and accordingly invested their tax officials with the power of administering torture as a means of compelling information and enforcing payment.

The board of officials of Illinois, who last year, under authority, prepared a new tax code for their State, and based their work on the hypothesis, that the only way to make a better system was to enlarge and make more effective the old, also, perceived this; and accordingly prepared a code, which one of the highest authorities in that State characterized in the following language:

"Without exception, it is the most objectionable law that was ever proposed, and we can imagine no act which will become so justly odious and detestable. It provides for the establishment of a distinct branch of the government, which may properly be styled, the grand inquisitorial and confiscatory office, clothed with powers and func-

tions, which, if enforced, would produced a revolution in Austria or Turkey."—*Chicago Tribune.*

The officials of the State of Massachusetts, also, in attempting to carry out a system which provides for the valuation of that which is intangible, and the assessment of what is invisible, acknowledge the necessity of the employment of extraordinary measures, and accordingly resort to a method of procedure, which has no parallel except in the records of the middle ages and of the inquisition, and constitutes, in itself, a satire upon any claim to the enjoyment of a wholly free and enlightened government. For failing to obtain satisfactory information about the private affairs of any individual; the chief assessors and their subordinates to the number of some fifty, meet in secret session, in a large upper chamber set aside for the purpose and appropriately termed the "dooming chamber," when the citizen in question, without being present either by counsel or in person, is arbitrarily doomed to the payment of any sum which a majority of those present may think proper; and from which "dooming" there can be no appeal.

Now the old Pagans, the officials of Illinois, and the Boston assessors, have undoubtedly been consistent in following the only line of action calculated to render their ideas of raising revenue by taxing all descriptions of property, in any degree effective; and the people of the State of New York ought clearly to understand that the same course is the only one open to them, which can, by any possibility, make their existing system anything different from the farce which every intelligent person must acknowledge that it now is.

But supposing the people of the State of New York were willing to inaugurate and put in practice such inquisitorial, arbitrary and pagan measures, of which indeed all the evidence is to the contrary,* there are three questions which it is important to first take into consideration:

1st. *Is an arbitrary, inquisitorial, illogical system of taxation in itself desirable?*

2d. *Is such a system anywhere effective, or can it be made so?*

3d. *Is there any way of collecting the revenue of the State with certainty, equality and economy, without resorting to arbitrary and inquisitorial measures?*

* The constitutional convention of New York in 1868 adopted the following provision and submitted it to a separate vote of the people: "Real and personal property shall be subject to an uniform rate of assessment and taxation." The result was that the proposition was signally disapproved, the majority against its ratification and adoption having been in excess of 44,000 in a total vote of 457,000.

## CONSIDERATION OF THE FIRST QUESTION.

1. In response to the first question, "*is an arbitrary, inquisitorial and illogical system of taxation desirable?*" the advocates of the theory of the existing system may make, and in fact have made this answer: That each individual owes the State annually a certain sum of money in the way of taxes proportioned to his entire property. If he voluntarily pays, he escapes arbitrary measures. If he declines to pay or tries to avoid payment, he has no just cause to complain if he is regarded in the light of a criminal, "or if the same arbitrary measures are used to collect his tax, as if it were a debt owing by one citizen to another."

But let us examine this averment. If the defaulting tax-payer is to be regarded as a criminal, and as such placed in the worse possible light, he certainly ought not to be deprived of the privileges of a criminal; which are a right to a public investigation according to the rules of evidence adopted by free and enlightened communities; a right to be heard before condemnation; and the right to be presumed innocent of having property subject to taxation until the fact is ascertained otherwise by legal proof. But under the existing tax laws, we do not accord to the tax-payer the privileges of a criminal; for no tax can be assessed on a large proportion of the personal property of the State, according to any rules of legal evidence that any common law court would adopt. No assessor, under the laws of New York, in assessing personal property can act judicially. The law gives him no power to obtain legal testimony of a character that is admissible in a court; he must act the part of an arbitrary despot against an inculpated tax-payer, or not act at all, and his conclusions for acting must be reached at best by the testimony of those who have no means of knowing anything, in a legal sense, about the subject-matter under investigation. It seems clear, therefore, that any attempt to tax without legal evidence, is an act of usurpation or despotism, wholly antagonistic to the principles of a free government, and that it is a mockery to characterize such acts as, in any sense, judicial proceedings.

## REGULATION OF ASSESSMENTS BY OATHS AN ABSURDITY.

Nor does the right to reduce or regulate the assessment by the oath of the tax-payer relieve the law in any degree of its unequal and despotic character; for every individual holding public office in the United States knows, that oaths as a guarantee of truth in respect to official statements have ceased to be of any value. The assessments

made according to the oaths of parties, furthermore, are not made according to legal evidence, upon examination and proofs; but according to the will and secret caprice of each tax-payer, instigated by his selfishness, and the natural depravity of human nature. Each tax-payer, under the present rule, becomes therefore the interpreter, not only of the law, but of the fact, and makes a secret interpretation of both, and we have as many interpreters of the law, as there are numbers of tax-payers; and also an indefinite multiplicity of assessors; for each person who unfairly reduces his own assessment, arbitrarily assesses thereby some other of the community for the difference.

### THE PRESENT SYSTEM A VIOLATION OF THE PRINCIPLES OF CONSTITUTIONAL GOVERNMENT.

Now the commissioners, in the discharge of their duty, ask the people of New York, if all this procedure does not bear upon its face the most unmistakable marks of dishonesty; if it is not in the highest degree heathenish and disgraceful; and if the fullness of time has not come, when it should be at once and forever done away with? Could or would any people apply the same rules for the collection of debts? Is there any one who has so much confidence in human nature that he will propose a law, that a person who is sued, shall be discharged from all claims of indebtedness if he will make oath, interpreting both the law and the fact himself, that he owes the claimant nothing? Is it believed, that under tariff laws, the government could get sufficient revenue to pay for its collections, if the importer was permitted to offset debts against the value of his goods; or if the law was peremptory that his oath alone should be given, and that there should be no legal examination, inspection or proof of the value or character of the importations?

In whatever aspect we view the present system, therefore, it is arbitrary and in violation of the principles of constitutional government. If the assessor acts, he acts solely by his despotic will, and without any reference to legal proof or evidence, such as is enforced in recovering private debts; and if the tax-payer, by his oath, becomes the arbiter, his will is supreme, and not subject to investigation or control. It is a system, in short, that violates all the laws of evidence, the growth of centuries in civilized countries; that makes secret that which should have publicity, and proceeds upon a basis that could not be recognized for one moment in the collection of debts, or in the trial of persons accused of the most heinous of offenses.

## INCONSISTENCIES OF THE EXISTING SYSTEM.

But pursuing this inquiry still further, let us next consider what claim can be preferred for the existing system in respect to consistency and uniformity in its methods of administration or procedure.

It would seem as if the one principle to be recognized above all others, in any system of taxation, as fundamental and admitting of no exceptions, should be that whatever rule of assessment is once decided upon and adopted, the same should be made uniform in its applications; and that officials should not be permitted to put upon it entirely opposite intepretations, according as it may subserve their interests to do so. And it would seem, further, as if any State, calling itself civilized and enlightened, would be ashamed to permit an inconsistency of this kind to find a place upon its statutes, or a recognition in its administration. And yet this inconsistency, which, stated in the abstract, no one would be willing to justify, forms the rule and not the exception of almost every State system of local taxation in the country. Thus, real estate is universally held to be taxable at the place where it is situated; but personal property, of an equally tangible and visible character as real property, is held, for the purposes of taxation, to follow the owner; and solely by reason of a fiction of law "*mobilia personam sequuntur*," which the Supreme Court of Vermont (Catlin v. Hall, 21 Vt., 152), has declared, was "adopted from considerations of general convenience and policy, and for the benefit of commerce;" and which, according to every principle of common sense and equity, was never intended to have any other meaning, than that for the purpose of the sale, distribution, and other disposition of property, any act, agreement or authority, which is sufficient in law where the owner resides, shall pass the property in the place where the property is.* As a principle applied to taxation, it has undoubtedly one argument in its favor, namely, that of old custom; but it is interesting to note, that when first made

* In the case of Catlin v. Hall (21 Vt., 152), the question at issue being, whether certain personal property, indisputably located in Vermont, could be legally taxed because the owner was domiciled out the State, and personal property having no fixed *situs* followed the owner, the court after referring to the fiction insisted upon, observed: "But this rule (*i. e.*, that personal property follows the owner) is merely a legal fiction, adopted from considerations of general convenience and policy, for the benefit of commerce, and to enable owners to dispose of property at their decease agreeably to their wishes, without being embarrassed by their want of knowledge in relation to the laws of the country where the same is situated." And in the case of Green v. Van Buskirk (7 Wallace, 139), the Supreme Court of the United States, by Mr. Justice Davis, held, that the fiction of law that the domicile of the owner draws to it personal estate wherever it may happen to be, yields whenever for the purposes of justice that the actual *situs* of the property shall be examined. "This fiction," he continues, "has yielded in New York on the power of the State to tax the personal property of one of her citizens situated in a sister State, and always yields to laws for attaching the estate of non-residents, because such laws necessarily assume that property has a *situs* entirely distinct from the owner's domicil."

applicable in England, equity and consistency were so far regarded, that real estate was placed upon exactly the same footing as other visible, tangible property, and in common with the latter was held to follow the owner, and be taxable only at the place where the owner resided. But so early did liberal and simple views, in reference to the nature and scope of taxation, come to prevail in England, that the first English colonists and lawmakers who came to America do not appear to have brought with them any of the narrow and illogical views which have characterized their descendants. Thus, for example, one of the earliest laws of the Massachusetts colony reads as follows: "*No man shall be rated here* (Massachusetts) *for any estate or revenue he hath in England, or in any forreine partes, till it be transported thither.*" (*Mass. Historical Society Collections*, vols. 7 and 8, page 213*.) And in the first provincial codes of Pennsylvania, especial care was taken to confine taxation to land, and a very few articles of personal property of a visible character, as slaves, horses and cattle, and to exempt from taxation, debts, accounts, merchandise, and ships.† But in later days, when laws came to be made by legislators who could not conceive that anything more was involved in taxation, than the raising of a given amount of money, the discriminating rule in respect to the *situs* of real and personal property was generally adopted, and has resulted in the following absurdities:

If a citizen, resident of Massachusetts, owns a farm, with cattle,

* When, therefore, the claim is set up as it has been during the past year, that the existing system of taxation in Massachusetts is founded upon, and is "justified by the wisdom of the fathers of the Massachusetts colony," the claim is preferred without any very exact knowledge of what the wisdom of the fathers actually was.

† In a report of the law committee of the common council of the city of Philadelphia, submitted February 16th, 1871, we find the following historical review of the tax laws of Philadelphia, under the government of William Penn and his successors in the colonial government:

These laws "were framed to avoid repeating errors which had been proven by long experience in Great Britain and the continental countries. Anxious to foster trade, commerce and industry, and make the province the home of a free people, the founder of Pennsylvania came with a plan of government. The earliest enactments of direct tax laws show that he and those who followed him were as careful, in this regard, in profiting by the most enlightened views of his time as they were in planning the city with broad and regular streets for "a great town." Anterior to this period, although personal estate had not attained the magnitude and importance in Great Britain that it has at this time, yet tax laws had been enacted to rate it and make it pay part of the public burdens. These laws were found to be inquisitorial in their nature, and by concealment, evasion, and perjury, were not only demoralizing to the people, but the enlarged basis was found to be more unequal than the retention of a few subjects for the levy. Added to this, the higher rate of interest paid in France and other continental countries drew from the kingdom capital which should have been retained to improve their own country and give employment to the people. The English government, therefore, wisely abandoned this system, and it was in the light of these facts that our first enactments were made. We find the Provincial Council (1683) first determining that "a publick tax on land ought to be raised to defray the publick charge," and the enactment of 1700, fixing county rates and levies (which law was not enrolled), is believed to have been not larger in the subjects of county rates than in the act of 1724, which were real estate, horses, cattle, sheep, negroes and a poll-tax. It will be noticed, that the personal estate here enumerated was visible property not sus-

sheep, or horses, grazing upon it, in New York, the tax officials of Massachusetts hold, that while the *situs* of the land is in New York, the *situs* of the stock equally tangible and visible (by virtue of the rule that personal property follows the owner), is in Massachusetts; and they tax the owner there for the same accordingly. If, however, a citizen resident of New York owns stock situated upon a farm in Massachusetts, the latter State ignoring her former rule of procedure, taxes this property by reason of its being within her territory and jurisdiction, and without any reference to the domicil of its owner. New York, rightfully adopting this latter rule, the citizen of Massachusetts, in the first instance, is inevitably subjected to double taxation on one and the same property; and the citizen of New York would be subjected to the same treatment, were it not that the courts of New York, some years since, decided that the power of the State of New York to tax visible, tangible property, was strictly limited to property actually within the territory of the State.

In other respects, however, the courts of New York have left the law of New York governing the *situs* of personal property the same as in Massachusetts, and therefore it is that most of the personal property of the cities of the State, enjoying the advantages of cleaned and lighted streets, the protection of the police, and of other acts of municipal administration, must be taxed, if taxed at all, where the owner resides; which may be, and frequently is, in an agricultural town, where there are few expenditures and a low rate of taxation. But when we come to mortgages held by foreigners, and negotiable bonds deposited with the comptroller of the State by foreign insurance

ceptible of concealment, and that debts, accounts, merchandise and ships, are nowhere mentioned. In the several enactments that followed in 1795, 1799, and 1834, the subjects of county levy were substantially the same, sheep and slaves being omitted in the last act, and officers added to the two last, and it was not until 1844, a period when the State, by large expenditures, had become embarrassed, that, by the act of 29th day of April, 1844, mortgages, money owing by solvent debtors, stocks, household furniture, public loans, watches, etc., were made taxable for county purposes. The attempted enforcement of this act was so injurious to the people, by driving capital and industrial establishments from the State, and so evaded in returns, that by common consent the law remained on the statute book a dead letter until the consolidation of the city."

"At that time (1854) the question was again discussed, and although the councils of the city had the power to impose the tax rate upon all the subjects of taxation, in the thirty-second section of the act of 1844 we find, by the first ordinances, they limited the levy to real estate, furniture, horses cattle and pleasure carriages, and so continued until 1864, when an act was passed empowering the city to levy taxes on all the subjects of taxation contained in that section of the act of 1844, a power which they possessed before, but had not exercised."

"Since that time the authority of the city to levy a tax on mortgages, stocks of Pennsylvania corporations and occupations, has been repealed. In considering the enlargement of the subjects of levy in this city, the fact must not be lost sight of, that the State does not impose any tax on real estate for State purposes, but derives all its revenue from corporation stocks and loans, merchantile license, tavern licenses, collateral inheritance, etc., and it is estimated that of the gross receipts for 1870 ($6,336,603.00), more than two-fifths of the amount ($2,600,000) was derived from the property and business interests of the citizens of this city."

companies, then New York, equally inconsistent with Massachusetts, reverses the ordinary rule of assessment, namely, that "personal property follows the owner," and in its place taxes such mortgages and bonds, without the slightest regard to the domicil of their owners.

Again, can there be anything more absurdly illogical than the law of Massachusetts, which provides that *personal property belonging to persons under guardianship shall be assessed to the guardian in the place where the ward resides, in case the ward is an inhabitant of the State; but if the ward is a citizen and resident of another State, the property in trust shall be taxed to the guardian in the place where he is an inhabitant.* If, therefore, it should so happen that the guardian resides in Massachusetts, the ward in Connecticut, and the property in trust be personal property in the city of New York, the same property would be certain to be taxed *twice*, and possibly three times.*

That such anomalies and absurdities should be retained in the local tax codes of the United States after every other nation has discarded them, is surprising; but that in this latter half of the nineteenth century, when the effort is being constantly made to lift society to a higher plane, by making the law of abstract right and justice paramount to all considerations of self-interest and expediency, it is infinitely more surprising that intelligent law makers and administrators should be found willing to defend such anomalies, and even advocate their continuance.

By the laws of New York, indebtedness in valuation for taxation is allowed to offset assets in the case of personal property, on the general ground that it is unjust to tax a man on property for which he is indebted, and practically that the enforcement of a contrary rule would seriously interfere with the vast commercial transactions of which New York city is the center; but no man can assign any good reason why indebtedness should be allowed to offset assets in the shape of cattle, merchandise, money or machinery, and not offset assets in the form of land and buildings, except that it would be doubtful whether the State under the latter rule could collect an adequate revenue. Massachusetts meets this difficulty by refusing to allow indebtedness to offset or diminish the valuation of any tangible property; but her citizens, when consulted privately, speak of the enforcement of the law as an absurdity and a failure. New York, on the other hand, as before

* That the commissioners are not indulging in any mere fanciful hypothesis on the subject of double taxation under the laws of Massachusetts, they would state that assessments involving the conditions stated are now (January, 1872) pending and in dispute,—the ward in one instance residing in Boston, the trustees in Connecticut, while the property assessed to the ward (through the trustees, directly or on its income), is in great part bank stock and real estate in New York city.

intimated, allows indebtedness to offset one species of property; but in disregard of every principle of equity, refuses to make the application of the rule to real estate.

From these and other illustrations, which might be multiplied to almost any extent, it seems clear that any claim which the advocates of the existing system may set up in its behalf, that it is uniform, theoretically equitable, and fails only through lack of efficient administration, has no foundation in truth; while experience shows that it is only necessary to carry out the principles of the present system of local assessment to their logical conclusions to demonstrate and render palpable their inequalities, fallacies and absurdities.

So much, then, in answer to the *first* question, "*is an arbitrary, inquisitorial and illogical system of taxation in itself desirable?*"

### SECOND QUESTION.

In answer to the *second* question, "*is such a system anywhere effective, or can such a system be made so?*" the commissioners would return an unqualified negative, and in support of their position submit the following evidence:

1st. In Massachusetts, where the inquisitorial, arbitrary system is carried out as fully as it ever can be in a country having a constitutional form of government, and any decent respect for personal freedom and equal rights, there is no intelligent person who will claim for it any more than a partial success. Here double, triple, and even greater taxation of personal property is not uncommon, and there has been one case brought to the attention of the commissioners where a man was taxed seven times in one and the same year for the same capital. The laws of the State also require that real estate, merchandise, stock in trade, and corporate stocks, shall all be assessed without any deduction of debts, and that all residents of the State shall be taxed for personal property situated in other and foreign States and territories, no matter whether such personal property consists of visible, tangible objects, like cattle grazing on the plains of Illinois or Texas, stocks of goods, or machinery in California, ships registered in the port of New York, bullion in the Bank of England, or intangible, invisible rights to property, like evidences of indebtedness and negotiable instruments. In some towns in Massachusetts, moreover, they have a way of publishing and distributing a list of each man's personal property that can be got hold of, even down to the family cow and pig, the half dozen hens, and the sleigh bells and horse blankets, and yet notwithstanding this repeated taxation, this minute inquisition, this reach-

ing out all over the world to find property, and notwithstanding the investment of her officials with almost unlimited power, the amount of personal property assessed in the whole State of Massachusetts to individuals has never been but little more than half the valuation of the reality, and in some of her prosperous towns and cities is not equal to one-third, while there can be but little doubt that if the law was fully executed in respect to so much only of personal property as is exclusively within the territory of the State, that the amount claimed would fully equal, and probably far exceed, the aggregate value of all the real property returned for assessment.

As a further illustration that the system of Massachusetts is a failure, even at the point — Boston — where it is acknowledged to be carried out with the greatest degree of effectiveness, it is only necessary to examine the records of the Boston Stock Exchange and notice the prices which prevail for securities bearing a comparatively low rate of interest. Thus in May, 1871, Boston six per cent currency bonds sold for 101¾; Massachusetts, Maine, Connecticut and New York 6s, 100 to 106; Reading R. R. 6s, 108; Cambridge City do., 99¾. Now will any sane man believe, that citizens of Boston, or Massachusetts, or other New England States, where the same system of taxation prevails, buy these securities at the prices quoted, and pay a rate of taxation of from *one and a half to two* per cent on their market value — thus reducing their annual interest to four and a half or four per cent — when bonds of the United States paying *five* per cent interest and free from all taxation, or first mortgage railroad bonds paying seven or eight per cent interest could be bought for about the same money?

The most intelligent of the Massachusetts tax officials frankly admit that they have no expectation of any result under their system much better than what is already attained to; and if this is so, we have then an admission, or rather demonstration, that this same system, which is advocated mainly on the ground that it works uniformly and equally, can have no legitimate claim to either characteristic; inasmuch as to tax one man for one species of property, because through his honesty, ignorance, or inability to escape, he can be laid hold of, and fail to tax another man for precisely the same description of property, because he is cunning and unscrupulous, and so cannot be laid hold of, is not taxation, but arbitrary confiscation. Nay more, this same system punishes a man for being honest or ignorant, by making him pay not only his legitimate proportion of taxes, but also an addi-

tional amount to make up for the deficiency occasioned by those who by reason of cunning and dishonesty do not pay.

### PRINCIPLE OF BRIGANDAGE APPLIED TO TAXATION.

It should also not escape attention, that the practice of taxing property outside of the territory and jurisdiction of a State, and which, therefore, the laws of the State can in no ways protect, merely because the owner is a citizen or resident of the State, rests upon identically the same principle as that which constitutes the basis of brigandage, namely, that the control of the person of the victim, confers the right to a revenue consisting of a percentage of the value of all the victim's property of every description and wherever situated. (For further discussion of this point, see supplement.)

But if it be said, as it actually is, that in this species of levying, it is not the property outside of the State that is actually taxed, but that the property is simply taken as the measure of the ability of the owner to pay, who, being a resident within the State, is unquestionably subject to its jurisdiction and authority; the answer is, that if this is the intent, the laws nowhere express it, for they particularly specify property, and not persons; and that if it were otherwise, the change would simply be one of form, and not of substance. Or to put the matter even more practicably, does any one suppose that any State could get round the exemption of United States bonds from taxation, by providing that the amount of such property should be taken as the measure for the assessment of a poll or personal tax on any individual holding such property?

When, therefore, a State in the exercise of its authority, virtually proclaims that it is bound to consult its own interest irrespective of justice, and that the possession of might confers right, it is not to be wondered if a portion of its citizens turn round, and by their frauds, evasions and concealments, practically answer;—

"*The villainy you teach me, I will execute; and it shall go hard, but I will better the instructions.*"

And that they have made this answer, the condition of local taxation in nearly every State in the Union, the open disregard of oaths, and the contempt in which the law everywhere has fallen, are sufficient witnesses.

### THE PRESENT TAX SYSTEM OF NEW YORK INCAPABLE OF EXECUTION.

2d. The present law of New York, requires the assessors charged with its execution, "*to ascertain*" ("to make certain"—Webster),

"the taxable personal property" of all taxable inhabitants of the town or ward, and the assessment must include *all* the taxable personal property owned by the persons assessed within the State; and further, a valuation of taxable property is only to be reached by deducting debts due, *from* the personal property that is subject to taxation. Now, it is a fair question, whether this law as it stands to-day upon the statute book, is not in itself a nullity, for the reason that it requires an act to be done which from the very nature of the case it is impossible to do, and it is understood that some assessors in the State, take this view of the case.

They allege that even if they have the power and capacity to find out, and examine, and appraise or estimate all visible tangible personal property subject to taxation, that the tax-payer alone can know the amount of his debts, and therefore that no assessment can be made on an individual according to a fair construction of the language of the statute, unless the tax-payer will voluntarily report the amount of his invisible and intangible property, and also the amount of his debts. The law, however, does not compel or require the tax-payer to make any such report, nor does it authorize the assessors to *guess* about taxable property that may have no existence, and about which they cannot have any certain knowledge or information. It is, therefore, worthy of consideration whether the law of New York, as it stands to-day, does not in great part defeat itself, and whether the assessors are not fully justified in declining to act as guessers and clairvoyants in such matters as they cannot by any possibility know (ascertain), and in abandoning all attempts to value and assess personal property of an invisible, intangible character.* It is

* In this connection, the following letter, addressed during the past year, by one of the assessors of the city of Syracuse, N. Y., to the mayor and common council of that city, resigning his office of assessor, and giving reasons therefor, will be read with interest:

*To the Mayor and Common Council of the city of Syracuse:*

GENTLEMEN.—I have the honor herewith to tender my resignation as assessor, and ask that you accept it, for the reasons involved in the following statement:

As would naturally be supposed, the duties, powers and obligations of assessors are defined, regulated and enforced by the statute; and its provisions in this respect are so ample, and its instructions so plain and specific, that every judicial act for which it provides, is entirely freed from the restraint it would impose were its teachings less exact, or did its language admit of a *doubtful* construction. It offers to assessors but one alternative, of assessing property in the manner and at the rate it prescribes, or of violating their oath of office. For it persistently requires, that *all the property* liable to taxation, for State, county and municipal purposes, shall be assessed at its *full and true value;* and then, as if to guard against the possibility of mistake, defines that value to be *the value*, at which they would appraise the same in payment of a just debt due from a solvent debtor.

Accepting this as the *necessary* and only *authorized* criterion by which the judgment is to be guided and governed in their estimates of value, it only remains for assessors to ascertain, in the most reliable way possible, what that "full and true value" is, and then to assess accordingly; and from the *responsibility* of so doing I know of no avenue of escape, even though the pretexts by which it is sought be never so *plausible* or *urgent*. Admitting there is none, how can assessors con-

not, moreover, to be wondered that in some towns of this State there is no personal assessment levied; and that in some counties the entire valuation of personal property is not by any means equal to the personal property known to be in the possession of certain corporations. Other States, which adopt the system of taxing personal property of every description, attempt to overcome this by requiring the tax-payer to present and swear to a list of all of his property; and in default thereof, fine and arbitrarily doom or fix an assessment; but New York has thus far refused to subject her citizens to the exercise of any such proceedings; and the experience of other States, as already pointed out, shows that the results, attained to thereby, have no claim to be regarded in the light of a success.

sent to assess property at only one-third the value required by law? And what shall *excuse* or *justify* them, if they do?

But I may be asked, what difference does it make with tax-payers, whether their property is assessed at a high or low figure, if, *relatively*, it is all estimated by the same rule of valuation? I answer none whatever, practically; nor would it, if assessed as the statute requires, provided, that all through the State, the same inflexible rule was applied in determining values. But the *truth* is, no uniform standard of valuation is employed by assessors, even at the low rate at which property has everywhere been assessed; for an examination and comparison of the returns made by them, will show that the scale used by them is so very *flexible* in its character, and is *graduated* between extremes so *remote* as to allow *real estate* to be assessed anywhere from *twenty* to *fifty*, and *personal* from *thirty* to *one hundred per cent of its full and true value*," as determined by current market prices. In the language of another, this free and easy way of adjusting values under the law, "is not only grossly unjust, but it is demoralizing to the last degree." Another, in his attempts to make the practice odious, brands it as a "gigantic fraud."

So much then for the requirement of the statute as to valuation, and the practice under it. Permit me now to say, in view of it, could I be persuaded, for reasons not yet apparent, that it was my duty to go into the field and, "to the best of my ability" help to do the preliminary work which is required to be done, prior to July 1st, doing it under the rule of valuation applied by assessors hitherto, and which it is proposed to reapply the current year also, I could not, when the assessment rolls should have been fully completed, consent to subscribe to an oath thereon, that in estimating the value of the real and personal property assessed *therein* I had complied with the requirements of the law when, in fact, I had *knowingly* and *purposely* violated it at every step, save, perhaps, in assessing the shares of bank stock.

Were I so to swear, I should deem myself guilty *of* and justly amenable *to* the penalties for willful and corrupt perjury, a crime which would find neither *excuse* nor *justification* in the acknowledged fact that, all through the State property is everywhere assessed in this same irresponsible and arbitrary manner.

What defenses are set up for this constant violation of the law from year to year, or by what ingenious processes of reasoning it is made both *possible* and *easy* to take the oath referred to, I know not. But this I do know; had I been in possession of the above facts at the time it was proposed to use my name, in connection with the nominations to be made for the office to which I have been elected, I certainly should have refused it.

If I have succeeded in making myself understood in this review, I have accomplished three things:

1st. I have made it appear that it would be inconsistent, unreasonable and unjust to increase the valuation of property in this city, unless there was a corresponding increase throughout the county and State.

2d. That the oath without which the completed assessment rolls would possess no *legal force*, is neither self-adjusting, nor is it a mere matter of form. If taken at all, it must be without change or modification. If *not* taken, payment of the taxes assessed is a voluntary matter, entirely.

3d. That my resignation is based upon scruples of conscience under the oaths required of me; and these I cannot sacrifice.

Very respectfully,

A. G. SALISBURY.

### Personal Property Free From Taxation?

But whether the existing tax system of New York defeats itself in the manner indicated or not, other influences, arising from causes over which the assessors can have no control, have very effectually combined to render it practically inoperative.

*United States Instrumentalities.*—Thus, of the personal property of the whole country, an amount equal to probably one-fifth—supposing the same to be all owned in the country—is represented by United States notes and securities, which are by law placed beyond the reach of State authorities for assessment and taxation. Under this head would be also included, so much of personal property as is represented by "cash," in actual possession, or on deposit, the same being like the bonds, a national instrumentality.*

Imported goods, wares and merchandise, in original packages, in possession of the merchant importer, also stand in the same category.†

*State bonds.*—The fact that the supreme court of the United States has decided that no State can tax any instrumentality of the federal government—the power to tax involving the power to destroy—is now universally recognized, and its legality acknowledged; but it is not so generally known that it has also been decided, that the federal government cannot tax a State instrumentality, as for example, in the special case decided, the income arising from the salary of a State office; and that Congress some years since, acting under the advice of the supreme court, repealed so much of the internal revenue law, as required the affixing of stamps to State processes, warrants, commissions, etc. But it would seem clear that what has been decided to be unlawful for the federal government, to do in respect to the States, is equally and unquestionably unlawful for the States to do in respect to each other; as for example, the taxing of the instrumentality or the borrowing power of one State by another State. And hence the commissioners hold, in conformity with the opinions of some of the best legal authorities in the country, with whom they have conferred, that the bond of a State, issued for the purpose of raising money, or as an acknowledgment of its indebtedness, is not taxable by any authority other than the State which issues it.‡

*Personal property exempted by State legislation.*—In addition to

*Some States, as Connecticut for example, require their citizens to return in the list of personal property, "cash on hand," and then tax the same for State purposes. This requirement and proceedure is, however, clearly beyond the power of any State to do, as there can be no cash in the sense of current money, which is not a national instrumentality of precisely the same character as a bond of the United States bearing interest.

†See supplement.

‡*For legal decisions bearing on this subject, see supplement to this report.*

securities of the above named character, whose exemption from taxation is universal, there is also a very large class of property whose exemption is more limited, but sufficiently broad to influence the *situs* and determination of capital, and so give exemption from local taxation to the very classes and forms of capital for the taxing of which the retention of the present New York system is constantly advocated. Thus, for example, the States of Pennsylvania and New Jersey, for some years, have united in exempting bonds and mortgages on real estate from taxation, in those counties where investments of this character by non-residents and citizens are most likely to be made. During the past year also, the legislature of Maryland has swept from her statute book, all acts imposing taxes on mortgages in the city and county of Baltimore; while the legislature of the territory of the District of Columbia, has gone even still further in this same direction, and has exempted from direct local taxation all evidences of indebtedness; namely, railroad, corporate and municipal bonds, bonds and mortgages, money at interest, book accounts, etc.

The laws of the State of New York also exempt from taxation the deposits and surplus of savings banks, involving personal property to the extent of nearly *three hundred millions of dollars*:* all personal property of a visible, tangible character — stocks of goods, and chattels of every description — belonging to her citizens situated without the territory of the State; and all property *in transitu*, which by a decision of the court of appeals has been held to exempt from taxation all firms and corporations established in other States, but selling their own goods exclusively in New York through permanently located agents and warehouses.

And, finally, another door for the exemption of personal property from taxation in New York, one wide enough to admit all owners of such property to pass through, and one practically beyond the power of the State officials to close, will be found to have been opened during the past year by a decision of the State courts, that not only is property invested in national securities exempted from all State cognizance and taxation, but that *indebtedness* created by the purchase or hypothecation of such securities, whether incurred in legitimate

* Before the year 1867 the surplus of savings banks, which are practically "nobody's property," were liable for taxation, but during that year the following ingenious law was enacted: "The privileges and franchises granted by the legislature of this State to savings banks or institutions for savings are hereby declared to be personal property and liable to taxation as such in the town or ward where they are located to an amount not exceeding the gross sum of their surplus earned (after deducting the amount of such surplus invested in United States securities)." It seems unnecessary to add that after this the amount derived from the taxation of the surplus of savings banks was very inconsiderable.

transactions or avowedly for the purpose of evading taxation, may be used to offset a similar amount of other personal property, and thus withdraw the same from any control whatever by the State authorities for valuation and assessment.*

The person loaning the money on such collateral, it may be remarked, will also undoubtedly regard his loan as an investment in United States securities; and as he is permitted to make a secret interpretation of the facts and of the law, his conscience will probably allow him to swear that so much of his property as is thus represented is likewise exempt from taxation.

When the former report of the commissioners was published, a criticism was preferred against it, that the exposures which it presented of the defects of the existing system and the means resorted to for the purpose of evading taxation, were likely to prove exceedingly damaging to what were left of the "honest tax-payers," and that the value of the report would have been enhanced if much of this information had been omitted from its pages. But the commissioners take a different view of the subject, and hold that if there are ways and means of evading taxation, this information should not be restricted to a *few*, but that *all* should be placed upon an equal footing. And then again, they would ask, what sort of public policy can that be which does not invite the utmost scrutiny and exposure of details; or, what can be thought of a system of taxation whose efficiency is supposed to be in proportion to the ignorance of the community in respect to its defects and irregularities?

* SUPREME COURT OF NEW YORK. *Jan.* 3, 1871—(Before presiding Justice Ingraham and Judges Barnard and Cardozo)—*Assessment of Personal Property—The People ex rel. Benjamin T. Babbitt v The Commissioners of Taxes and Assessments for the City of New York, Respondents.*—The relator in this case was, in April last, assessed by the commissioners of taxes of this city, on his personal property on $250,000. He claims that, on the 1st of January, 1870, his personal property and assets, other than certain bonds of the United States government, amounted in the aggregate to $345,895.97, and that his debts on that day were $356,084.49; that between January 1 and April 1, 1870, the liabilities and debts of the petitioner increased, and that at the end of April the excess of debts over his assets was greater than on January 1. On the 29th of April, 1870, he addressed to the respondents a written notice, duly verified, to the effect that he was not liable to taxation in any amount for personal estate, and requested them to strike his name from the assessment rolls. From this statement it appeared the relator was the owner of $250,000, commonly known as five-twenties, which had been purchased by him in the years 1865, 1866 and 1867, for permanent investment, which bonds he claims are by law exempt from taxation. The petitioner, therefore, insisted that as his debts exceeded the amount of his personal property, aside from the bonds mentioned, he was not liable to be assessed or taxed in any amount for personal estate, and that those bonds could not be taken into consideration for the purposes of taxation, either as a part of his capital, or for the reduction of his debts and liabilities. The respondent declined to accede to this, but gave the relator notice that they had reduced his assessment to $200,000. From such decision an appeal was taken to this court, which, after hearing, gave judgment in favor of Mr. Babbitt.—*Press Report.*

## CLASSIFICATION OF PERSONAL PROPERTY.

Under these circumstances, the difficult question presents itself: How, in a system of taxation arranged to meet the necessities of the State of New York for revenue, shall personal property be dealt with? And, as preliminary to attempting an answer, it is important to consider, in the outset, how the personal property of the State, in respect to taxation, classifies itself.

The facts already presented show:

*First.* That a very large portion of such property, through the laws of the United States and the decisions of the federal courts, is absolutely or inferentially beyond the control of the State authority for taxation; such as United States securities, imported goods in the original package, money obligations of other States, and property owned by citizens whose *situs* is unquestionably beyond the territory of the State, and consequently beyond its jurisdiction, processes or protection. The commissioners take it for granted that they would not be justified in recommending the legislature to instruct their law officers to reopen all these questions in the courts, with the expectation of obtaining a reversal of former decisions, as preliminary to revising the existing system; and that, pending such action, all efforts for reform be suspended. And if not, then the personal property of the State, included under the above heads, cannot be considered in any new system of taxation.

*Second.* Another large proportion of the personal property of the State is of the most intangible character, and in great part invisible and incorporeal. As such it fluctuates in value in the hands of any one individual continually; it is measured by indebtedness which may never be the same one hour with another; it is easy of transfer, and as essential to using is in fact continually transferred from one locality to another, and from the jurisdiction of one State to the jurisdiction and laws of another and a different State. Now, how is personal property of such a character to be reached, valued and assessed for taxation? Every effort heretofore made in every country to tax it has proved wonderfully uncertain and unequal, and therefore every country that has ever attempted it, with the exception of Holland*

* Holland, by reason of her immense national debt, the largest comparatively of any country, has been obliged to maintain a most rigorous and extensive system of taxation in order to raise revenue sufficient to the wants and requirements of the State. But it has been prominently brought out during the past year in the discussions which have taken place in France on the revision of the French fiscal system, that the decadence of Holland dates almost from the hour when taxes were imposed on manufactories, commerce, fishing industry, and moneyed capital. Business went elsewhere, and with the decline of business the ability to pay taxes diminished, and the burden of taxation augmented. (*See Journal des Economistes, November*, 1871; also, *Principles of Political Economy. J. R. McCulloch, pp.* 470–71.)

and the States of the Federal Union, have abandoned the project as something wholly impractical.* Nevertheless the idea is entertained, and during the past year has been publicly expressed by men whose opinions are entitled to respect, that all such property, or rights to property can be assessed as uniformly and efficiently as real estate or rents of buildings; and that it is the business of the commissioners to devise a way for so doing, and not to create difficulties, but to remove them. But to all such as entertain these opinions the commissioners would propound the following questions: How can you devise a law to tax the incorporeal, invisible property of non-residents? How will you tax the owners of mortgages on real estate in New York, who reside in Pennsylvania and certain counties in New Jersey? How will you tax negotiable instruments, if owned by residents or non-residents, secured by property in New York, if the negotiable instruments are located out of the State, since the court of appeals has decided that New York cannot tax property having a *situs* or location beyond its jurisdiction? How can you tax the $1,000,000,000 of products and manufactures sent to New York annually from other States in the hands of consignors and agents, and now exempt from taxation? How can personal property be reached while debts are permitted to reduce the assessment? What system can be introduced that will enable assessors to see things which cannot be seen, or examine things that are intangible?

And *finally* in respect to so much of the personal property of the State as is visible, tangible and clearly within the territory and jurisdiction of the State: How shall we deal with such of this property as by the laws of contignous and competing States is free from taxation? Can we afford to put manufacturing industry, capital employed in improving real estate and in building, shipping engaged in commerce, bonds and mortgages and other evidences of debt, under disadvantages from which they can readily relieve themselves by simply moving across our borders?

* Within the past two years the local taxation of Great Britain has been made the subject of special inquiry and investigation by a committee of Parliament; and in addition to several official reports, two prize essays on the same subject have been published by the Statistical Society of London: (*i. e.*, "*On the Local Taxation of Great Britain and Ireland.*" *First and second Tayler Prize Essays, by R. H. Inglis Palgrave, and John Scott, of the Inner Temple.*) During the past year, also, the necessity of raising increased revenue in France has also drawn especial attention to the subject of local taxation in that country; but it is particularly noticeable, that in neither England or France, has any prominent speaker or writer advocated the direct taxation of personal property; or even alluded to the subject, except to scout the very idea of such a proposition.

### COMPARATIVE DECREASE OF NEW YORK DURING THE LAST DECADE.

Is not the small increase of the population of New York during the last decade, 12.94 per cent, as compared with Pennsylvania, 21 per cent, and New Jersey 34 per cent, sufficiently significant to satisfy that the occasion for temporizing has gone past, and that of practical, sound action has come? *

### EFFECT OF INJUDICIOUS TAXATION ON BUSINESS DEVELOPMENT.

The following incident, taken from a recent report of the chairman of the board of tax revision for the city of Philadelphia, Hon. Thomas Cochran, affords a striking illustration of the influence of injudicious local taxation upon business interests within the sphere of its execution. Thus, during the first quarter of this century, the auction business of Philadelphia in respect to teas, coffee, indigo, drugs, dry goods, etc., was the most important in the country, and attracted to that city merchants from widely different localities. In 1826 the legislature of Pennsylvania, looking for new sources of revenue, increased the taxes on auction sales in Philadelphia to such an extent as to make them *one* per cent higher than in New York on East Indian goods and three-quarters of one per cent higher on most descriptions of other goods. The result was that merchandise in a great measure ceased to be consigned to Philadelphia, and went to New York, and with the merchandise and sales went also a very large proportion of the foreign shipping owned in

* Heretofore it has been considered a particularly happy idea by many tax officials in New York, and especially in New England, to endeavor to throw as much as possible of the burden of local taxation upon the manufacturing enterprises included within their jurisdiction; and with this view the valuation of the real and personal property pertaining to such industries—especially if the same are incorporated,—is placed for taxation at the very highest admissible figures, and above the average of other property; old swamps and bogs, for example, originally having no appreciable tax valuation, becoming in the eyes of the assessors first-class real estate the moment the same have been flowed with water and made available for a mill privilege. In the State of Connecticut the legislators have even made a point of going out of their way, to make sure by a special statute, that "mills and buildings used for manufacturing purposes," shall not enjoy the advantages of other property in being rated at *less* than their real value; but shall be especially assessed at their full value; and so in fact discriminated against rather than in any way favored. Now what has been the result? Why Vermont and Maine having tried this practice for an indefinite period have at last come to a realizing sense, that manufacturing capital has ceased to come or remain within their borders, and prefers to go to Pennsylvania where it is more liberally dealt with; or seeks investment in invisible, intangible securities, representing property in other States, and which, from the very necessity of the case, cannot be discovered by the local tax officials. And having made the discovery, these States are now endeavoring to entice back such capital by promising an exemption from all local taxation; while in Connecticut, although no legislative remedies have been yet proposed, the people of many towns and cities have become fully conscious that the value of their real estate, of their trade, and the aggregate of their population would have been very much greater to-day than it actually is, had a policy of local taxation, more liberal and intelligent than now exists, been heretofore adopted. "We can point," says one of the leading journals of this State in a recent article on this subject, "to more than one town in Connecticut where manufacturing enterprises have been actually abandoned on account of the policy pursued by town authorities relative to taxation."

Philadelphia, and which formerly sailed from that port. After the mischief was done and the business of Philadelphia seriously injured, the legislature of Pennsylvania modified the law, and during the past year, with a wise regard for the State's interest, swept all such taxes from her statute books.*

The legislature of Pennsylvania, during the last year (1871), also repealed all existing taxes on trades, professions and employments, thus taking a still further step in the direction of concentrating taxation to the fewest and simplest elements.

The commissioners would also call attention to the following resolution, embodied during the past year, as part of the platform of one of the great political parties of Pennsylvania:

"*Resolved, In the judgment of this convention the time has come when the State tax on personal estate may be safely abolished.*"

## How Philadelphia Regards the Direct Taxation of Personal Property.

During the past year, the subject of the direct taxation of personal property being agitated in Philadelphia, the common council of that city requested its law committee (consisting of nine members), to consider the subject, and prepare a bill "for the taxation of all personal property as now enforced in some of the States of the Union." This committee, in February, 1871, submitted a report, declining, in fact, to report any such bill, on the ground that, after careful examination, they were satisfied that it would "injure the business interests of the

* The report of the poor law commissioners of Great Britain for 1843 also gives another interesting illustration of the effect of injudicious taxation in causing the permanent diversion of a great branch of industry from one section of England to another and less favorable section. It says: "The practice of rating stock in trade never prevailed in the greater part of England and Wales. It was with comparatively few exceptions confined to the old clothing district of the south and west of England. It gained ground just as the stock of the wool staplers and clothiers increased, so as to make it an object with the farmers and other rate payers, who still constituted a majority in their parishes, to bring in a considerable property within the rate. They succeeded by degrees, but when the practice of rating stock in trade was fully established in this district the ancient staple trade rapidly declined, and withdrew itself still more rapidly into the northern clothing districts, where no such burden was ever cast upon the trade. Whether this transfer of business was in any way aided by the imposition of other taxes in the district and the exemption in the other, cannot now perhaps be distinctly proved; but it is undeniable that the operation must have been in effect a discriminating tax of a very considerable amount against the trade of the one district, and therefore proportionably in favor of the trade of the other. In both districts the trade was of ancient growth, but hitherto the southern had the advantage, for the natural and acquired advantages of the two districts are in most respects such as rather to have favored the southern district; *i. e.*, in respect to density of population, possession of coal beds, proximity to London, and almost unlimited capital." The same report also brought out another very curious fact in respect to the experience of this English district, namely, that the success in raising money which attended the taxing of the woolen industries led to great improvidence and expenditure; and relief under the poor rates being increased and distributed injudiciously, "produced most conspicuous effects in deteriorating the habits and depreciating the wages of the agricultural laborer."

city, and stop or retard the growth of our industrial establishments." Discussing the effect of the proposed change on the real estate property of the city, the committee say:

"Will the owners of real estate be relieved of any of the weight of local taxation, by imposing a part of the levy on the business of the city?

"Capital, business and industrial establishments alone give value to city real estate. With it the real estate can be made to produce revenue, maintain or increase in value; without it comes depreciation in values and want of occupation for large classes of people. If, therefore, a tax imposed on the business interests of the city would have an unfavorable effect upon its growth and prosperity, the transfer of a part of the tax levy to property in business would, in effect, be an injury to the owners of real estate. This, we think, would be the result. Of the capital in business in this city, the largest interest is in manufacturing. Through the prosperity of our industrial and manufacturing establishments, we have grown and maintained our position as the second city in the union in the last decade. Thousands of families are maintained by that interest, and whilst we may attribute our advance in this respect, in part, to our favorable location, well-housed population, and the fine agricultural country surrounding us, yet the ability of the manufacturer to compete in other markets with the manufacturer of Massachusetts and Connecticut, is more largely owing to the fact that here the capital of the manufacturer is untaxed, than has been generally supposed."

"A careful examination of the facts show that, in New England, private capital is taxed, and being at about the same rate as corporate stocks, has probably induced the formation of manufacturing companies, the corporate form having some seeming advantages in the exemption in part of individual liability and facility to aggregate a large capital at the start."

"In the city of Philadelphia, private capital in manufacturing being untaxed, except for the value of the real estate occupied (machinery not being estimated in the valuation), the business has been encouraged in the hands of individuals and firms, many of whom, with but limited capital at the start, have been enabled to enlarge until they give employment to great numbers of our people."

"The aggregate of the establishments of these enterprising men has made our city the largest center of manufactures in this country. The business which they have concentrated here, gives employment to and sustains an important part of our population, and materially

assists in maintaining the value of real property. *We cannot afford to try the experiment of imposing a tax on our manufacturing interests.*"

### DIFFICULTIES IN THE WAY OF ESTIMATING VISIBLE PERSONAL PROPERTY.

But irrespective of the influence of the legislation of other States, the commissioners assert, that no means can be devised of taking an inventory, or estimate of even tangible personal property with any degree of accuracy, which will not entail an expense about equal to the amount collected at the present rate of taxation; for the commissioners assume, if the existing laws relative to taxation are to be allowed to remain on the statute books, that sooner or later, the attempt must be made to enforce them. If, therefore, we are to have equality and efficiency, an official inspector must be upon every farm the entire year to ascertain its annual products, or the average of personal property on the farm; and every house, store, shop, or piece of occupied property, must be placed continually under the espionage of an expert. Besides, it cannot certainly be claimed to be equal and just taxation, to admit the goods of all citizens of other States free from taxation, to be sold at wholesale and retail in competition with similar property of citizens of New York, which is subject to heavy taxation. At present, there are whole blocks of stores in New York city, occupied by agents of New England, New Jersey and Pennsylvania manufacturers, who consign and sell their goods free from taxation, while the citizen of New York occupying analogous stores, pays taxes (theoretically at least), on his entire stock or capital. New York has a right to tax these goods, for the Supreme Court of the United States has recently made a decision, that importations from sister States may be taxed at the same rate as the same articles are taxed in the State into which the importations are made, but to do this in such a way as to insure equality of taxation in every locality, would require not only a system of customs along the State borders, but a system of *octroi** about every city and town. But

*The "*octroi*" system of taxation in Europe, is one by which taxes are levied in towns and large villages, on meat, vegetables, wine and other articles of living, brought into them for the use of the inhabitants, and has for a long time in continental Europe been a favorite method of raising local revenue. In Prussia, during the past year, the government, in deference to an almost universal public sentiment has introduced a bill in parliament, providing for the entire abolition of the "*octroi*;" but it is to be noted, that in place of substituting for it a tax on stocks on hand, evidences of debt, money capital and the like items of personal property, the government proposes to make it compulsory on all towns to establish a species of income tax—in which taxes are not levied upon the lowest rate of income. In France, on the other hand, the *octroi* is yet in full operation.

what, under such a system, would become of the present commercial and financial supremacy of the State?

### SPECIAL TAXES ON NON-RESIDENT TRADERS UNCONSTITUTIONAL.

The supreme court of the United States, in the case of Ward *v.* The State of Maryland, December, 1871, has decided, that *special* taxes imposed by States on non-resident traders, are unconstitutional; and that non-resident merchants, agents, commercial travelers and the like, may "sell, or offer, or expose for sale" any goods in any State, "without being subject to any higher tax or excise than that exacted by law of permanent residents." But as the practice of taxing merchants and dealers for the mere privilege of doing business, or making the procurement of a license the preliminary condition of doing business, is generally repugnant to popular sentiment, and has as yet been put in practice in only a few localities; the decision above referred to, is equivalent to allowing non-residents to do business on a basis of advantage not allowed to merchants and dealers who are resident, and as such are taxed upon their stocks of goods offered for sale, and upon all the capital and machinery employed in the production of such stocks. The opportunity which is offered in large border cities, like New York, for the transaction of an immense business by sample by citizens of other States, constitutes, therefore, another strong argument in support of the position of the commissioners, that the local taxation of New York should be so adjusted that there should not be a discriminating tax against resident merchant citizens and manufacturers and in favor of non-residents.

### THE PROPOSED NEW SYSTEM OF TAXATION.

Having thus demonstrated the absurdity of the theory of the system of local taxation at present adopted by New York, the inequality and irregularity of its administration, and the injury which is certain to accrue to the material interests of the State from its longer continuance, the commissioners come next to the consideration of the third question:

"*Can any system of local taxation be devised, which will prove effectual for revenue, be free from arbitrary and inquisitorial methods of administration, and at the same time be made to work with strict justice and uniformity?*"

And, in answer to this question, the commissioners, as the result of a most careful investigation of the whole subject, and after having endeavored to thoroughly acquaint themselves with the experience of

other States or communities, present herewith a code of a new system of local taxation; in respect to which they feel entire confidence that it will prove in every way remedial of the most serious of the evils experienced under the present system, allow of simple, effective and economical administration; and in opposition to which no objection has as yet been presented which cannot be shown to have its origin either in a misconception of the views of the commissioners, or in a prejudice in favor of old ways and observances, simply because they are old and customary, and not because they have been founded on either justice or expediency.

The main features of the proposed new system may be stated as follows:

*First. Taxation of real estate, lands and buildings, at a full and fair market valuation.*

The existing laws require this; but it is perfectly well understood that at present so much of this law as relates to valuation is a perfectly dead letter, and that in place of "full and just valuation," the valuation, as before shown, runs down as low, in some instances, as fifteen or twenty per cent; and on the average for the whole State is not probably in excess of forty per cent; and furthermore, that every assessor in the State in annually certifying under oath that he has complied with the law, annually swears to that which he knows is untrue, and can only exculpate himself of moral as well as technical perjury, by the plea that his official acts deceive no one, and are understood to be a mere form, without meaning or significance.

Now, it would seem clear, that the first step in the way of reform of the existing tax system, is to provide for the execution of this law; and the commissioners in advance charge, that no legislator, or citizen can oppose or be indifferent to the adoption of measures calculated to bring about such a result without becoming thereby a party to fraud and a promoter of social immorality. It is also important to state, that the recent experience of the cities of Boston, Philadelphia and Chicago shows, that there is no practical difficulty, as is often supposed, in valuing and assessing real estate at its true or approximative cash value, inasmuch as this method has been successfully adopted in each of the above named cities as a substitute for the former "guess-work" plan of rating such property.

And although it is an almost self-evident proposition, it may, nevertheless, be not out of place to recall to mind, that *it is the amount of expenditure and not the valuation that governs and controls the amount of taxation;* and that making the valuation of one and the

same description of property invariably conform to one and the same standard, cannot increase the taxes of any citizen, unless he is now unjustly taking advantage of the defects of the existing law to inequitably pay less than his fair proportion at the expense of some other citizen.

They also recommend that the administration of the whole tax system of the State be placed under the charge of some supervising officer, intrusted with full powers, whose business would be to see that the laws, whatever they may be, are lived up to and enforced; and that he shall be especially required to prosecute, or cause to be prosecuted, every assessor of the State who deliberately makes oath that he has complied with the provisions of the law, when the fact can be made evident that he has not done so.

*Second. To tax moneyed corporations of the State in conformity with existing laws.*

*Third.* A little reflection and an examination of the statistics of taxation will show, that under the two heads above specified are included almost all the property of the State now returned for assessment; and that what is not thus included is of a character very difficult, if not impossible, to fairly value and assess; and that the continued attempt, as now, to directly ascertain its value and assess it, will be productive of very little revenue, and for reasons above presented must prove disastrous to the future development and prosperity of the State. The commissioners, therefore, propose, as a substitute for all such defective taxation, and as an equivalent for the present tax on individuals for personal property, *to tax the occupier, be he owner or tenant, of any and every building used as a dwelling, or for any other purpose, on a valuation of three times the rental or rental value of the premises occupied; but not including under such assessment, any land except such as the building stands on, or is essential for access thereto.*

All property not embraced under one of these provisions, as above stated, to be exempt from taxation.

## RELATION OF REAL ESTATE TO PERSONAL PROPERTY.

The general principles, irrespective of considerations of expediency, on which the commissioners base the essential feature of their system, may be briefly presented as follows:

The market value of real estate is always proportional to, and dependent on, the amount of personal property, or rather productive capital, placed upon it, or in its immediate vicinity. Land in itself

has originally no value, as it cost nothing to any man to produce it. If there is no personal property or productive capital connected with it, or reflected on it, it will not sell in the market, or at only a nominal value. If by chance any buildings should be connected with such land they will possess no rental value. Only as personal property, or productive capital is brought in connection with real estate does its value become appreciable and augment.

Applying, practically, to New York the proposed system for taxing personal property through buildings or rentals as its representative, we should find that the *aggregate of taxation would be the lowest in the most sparsely settled agricultural districts of the State.* Property here is mainly in land, and the value *of the buildings is generally much less than the value of this land with which they are connected.* As we leave the sparsely settled agricultural districts, and rise through the more densely populated portions of the State from the villages to the towns, from the towns to the cities, and from the cities to the great metropolis of the continent, we shall find that the value of land, of buildings, and the aggregate of taxable valuation will increase, as the amount and accumulation of personal property increases, until land and buildings attain their greatest market and tax valuation in Wall street, Broadway and Fifth avenue, where the accumulation of personal property is the greatest. It is also to be observed, that starting at the bottom of the scale, with the value of land greatly in excess of the value of the buildings connected with the land, that this difference, as we progress upward through the more densely populated districts, gradually diminishes, until, as is the case very frequently in the cities, *the value of the building greatly exceeds the value of the land on which it is situated.*

And yet, while under the proposed system, the agricultural districts would, as now, pay the smallest proportion of the aggregate taxes, and the villages and cities as now also the largest, there would be no injustice, but on the contrary, one uniform, equitable rule of valuation and assessment.

### THE PROPOSED SYSTEM A CORRECT STANDARD OF MEASUREMENT OF PERSONAL PROPERTY IN DIFFERENT LOCATIONS.

A little reflection will also satisfy, that the proposed system of taxing "building occupancy," constitutes in itself a correct standard of measurement of personal property, or of expenditure and consumption, both for the city and country, and establishes also just and equitable relations in respect to taxation between city and agricul-

tural property. Thus, to illustrate, let us suppose a piece of occupied real estate worth $10,000 to be presented for taxation in the country, and in the city respectively. In the country the assessment under the proposed system would be as follows:

| | |
|---|---|
| Farm and farm buildings, valued at..... | $10,000 00 |
| Value of buildings and lot, $2,000.* | |
| Rental of buildings, at ten per cent, $200. | |
| Three times rental as equivalent of personal property... | 600 00 |
| Total valuation for assessment..... | $10,600 00 |

On the other hand, in the city, the assessment would be as follows:

| | |
|---|---|
| City store and lot, valued at..... | $10,000 00 |
| Value of building and lot, $10,000. | |
| Rental of building, at ten per cent, $1,000. | |
| Three times rental as equivalent of personal property.. | 3,000 00 |
| Total valuation for assessment..... | $13,000 00 |

Under the new system, therefore, the city store and lot would be regarded as a measure of $2,400 more of personal property, expenditure, or consumption, than the country farm or property of the same value, a measure which the commissioners hold, will prove to be entirely correct and equitable, both in theory and practice. But if the tax-payer in the country and the tax-payer in the city, hold other personal property apart from their lands and buildings, as stocks in banks, or other moneyed corporations, they will both be put on exactly the same footing as regards taxation or expenditure, and that too, without the possibility of either assessing the other by fraud or evasions.

### ECONOMY OF THE PROPOSED SYSTEM.

To devise a more economical method of assessing and collecting taxes, is equivalent to the invention of a labor-saving machine; and the commissioners claim, as one of the special merits of their proposed system, that it will prove, by its simplicity and freedom from detail, more economical than any other. Every man under the new system might know before the day of assessment exactly what his assessment and consequent taxation was certain to be; and few people, therefore, would in any contingency be subject to the expense and annoyance of examining the assessment rolls, or of carrying on vexatious contro-

*A fair average valuation for farm property in the country.

versies with the assessors. No discretion, moreover, being permitted to the assessors, it will not be possible to use the machinery of taxation in the slightest degree as the instrument for personal favor or malice, or for promoting the interests of any political organization. And it is well worth the consideration of the people of New York, especially at the present time, whether there can be permanent reform instituted in respect to municipal government, so long as the prominent and most influential citizens of any municipality are under the influence of any arbitrary and irresponsible officials.

An examination of the code submitted will show, that it is proposed that the tax on building occupancy shall be collected from the real estate; and it is permitted to the owner to collect of the tenant, for the reason that the larger proportion, probably three-fourths of the buildings of the State are occupied by their owners, and because the owners can more economically collect the tax than any official. In New York, at present, the tax on real estate, for sake of economy, is very often collected from the tenant; and the law permits the tenant to recover from the landlord; and for a similar reason it is now proposed that the building occupancy tax shall be collected from the land and recovered from the tenant by the landlord. Such a plan involves both reciprocity and economy, and is of mutual advantage to both landlords and tenants; and still the tenants are at liberty to make contracts that the landlords shall pay the building occupancy as well as any other taxes.

### THE PROPOSED SYSTEM NOT AN EXCLUSIVE TAX ON REAL ESTATE.

The question may be asked, as it was on the presentation of the former report of the commissioners, "Why not still further simplify the system, and impose all the taxes on real estate?" and to it the commissioners would return this answer, that an additional assessment upon the occupiers of buildings, equal to three times the rent of the buildings, seems to them to be most equitable, as a measure of the amount of the occupier's personal property, for they hold that no person can occupy buildings without possessing personal property to an amount equal to the proposed assessment under this just and uniform rule.* Then again, the proposed system taxes a man according to

* The commissioners assert unqualifiedly, and challenge refutation of their assertion, that no person can pay rent in any amount, or own and occupy any building, who does not have necessarily *three times* the value of such rent or rental value in personal property. Civilized life, in fact, cannot be carried on with any less amount of such property. If the rent is $100 per annum *three* times that, or $300, will not cover the value of the chairs, the tables, the bed, the stove, the clothing, the cooking and eating utensils, the tools and other appurtenances by which life is maintained, and the rent in question earned. If the rent is $10,000 per annum, there must be about $120,000 of personal

the sign which he puts out of his personal property, or the amount of his annual expenses or consumption. Adam Smith says: "In general there is not perhaps any article of *expense* or *consumption* by which the liberality or meanness of a man's *whole expense* can be better judged of, than by his house rent." "The luxuries and vanities of life occasion the principal expense of the rich; and a magnificent house, embellishes and sets off to the best advantage, the other luxuries and vanities they possess. A tax upon house rents, therefore, would fall heaviest upon the rich, and in this sort of inequality there would not, perhaps, be anything very unreasonable."* A valuation of real estate, furthermore, is not as positive a sign, or evidence of expense, consumption, or of protection under the laws, as the rental value of buildings occupied. Real estate often produces no revenue; is in some localities remotely protected, or not protected at all, and as cultivated land is rather a measure of production, than of expenses or consumption. The *indicia* adopted by the commissioners, however, as the measure of personal property, of protection, and of expense and consumption, are the most uniform and equal means of assessment and measurement that the best authors on taxation have ever recommended.

Let us contrast the *indicia* recommended with the *indicia* adopted in the present law. Thus the index which now determines whether a person is subject to personal tax or not in a given locality is the fact of domicil there; but such an arbitrary rule of taxation disregards all questions of the amount of protection in the locality, the amount of property there, or the amount of expense or consumption of the tax-payer in the town, city or State.† It is a

property productively employed by the occupier, or the rent could not be paid, except at the expense of capital. The question was indeed put to one of the commissioners, by one of the leading merchants and capitalists of New York, "Would you tax a merchant who rents a store for $40,000 per annum, on $120,000 personal property?" and the question was answered by asking another in return, "Would you as a real estate owner, rent a store to an individual for $40,000 per annum, unless you felt satisfied that the lessee had in his possession or control, productive capital equal to or in excess of $120,000?"

* Discussing the incidence of local taxation upon house rents, Mr. John Stuart Mill, in his Principles of Political Economy, observes:

"No part of a person's expenditure is a better criterion of his means, or bears on the whole more nearly the same proportion to them. A house tax is a nearer approach to a fair income tax, than a direct assessment on income can easily be; having the great advantage, that it makes spontaneously all the allowances which it is so difficult to make, and so impracticable to make exactly, in assessing an income tax; for, if what a person pays in house rent is a test of anything, it is a test not of what he possesses, but of what he thinks he can afford to spend."

† In France, the "*taille*," an inquisitorial, personal tax on profits, a species of income tax, was only levied upon villains, or upon those occupying lands under a base tenure. Adam Smith says: "This tax (the taille) is supposed to dishonor whoever is subject to it, and to degrade him below not only the rank of a gentleman, but that of a burgher, and whoever rents the lands of another becomes subject to it. No gentleman, nor even any burgher who has stock, will submit to this degradation." It is a curious chapter in the history of serfdom and slavery to see that a tax intended for an enslaved or degraded class, and in its arbitrary character only fitted for such a class, should long survive the

more arbitrary rule than the income tax of England, imposed in 1691, which provided that double rates should be paid by Catholics. Under that rule the Protestants paid half rates, but under our law those who do not live in the locality where the tax is imposed upon personal property pay nothing. A more arbitrary or unreasonable index, therefore, than the existing laws of New York now adopt, cannot be conceived. A residence is made a crime, coupled with a penalty.

Now, whatever other objections may be raised against the plan of the commissioners for valuing and assessing personal property, it would seem that all must admit that it is plain, economical, certain and uniform, and that it admits of the most complete investigation and publicity. Every block of buildings would be an assessment roll, and "he who runs may read." Returns, schedules and oaths may be false, but buildings never lie, and are a perpetual sermon of truth.

### Comparative Valuation of the Aggregate Property of the State under the Old and New Systems.

We come next to the consideration of the manner in which the valuation of property, and the rate and apportionment of taxes, will be affected under the proposed system, as compared with the conditions of the existing system. And in respect to this question it may be said:

*First.* That as the new system does not propose to change the present method of directly assessing real estate, except to make the assessment of the same equitable and uniform, the revenue from this source cannot be impaired. If the valuation is uniformly increased, the rate will be uniformly decreased; and, as a further result of uniform valuation, it will follow that every man who pays on an approximately honest valuation, will have his taxes diminished; while every man who now pays on a dishonest valuation, will not be longer allowed to arbitrarily assess his neighbor. But herein the commissioners are obliged to confess is to be found the real obstacle in the

institution that gave rise to it, and that after our entire population has become free, that we should still wear the badges of former slavery, and not appreciate the degradation which they indicated. A fugitive slave or serf, finding refuge in a burgh for one year, became a free man, and when in full possession of his rights could not be arbitrarily taxed in England or France. But under the system of taxation generally adopted in the United States, the people do not now enjoy the rights formerly accorded to a fugitive slave or a freedman. Adam Smith said that at the time he wrote, the capitation taxes in France were assessed upon the highest orders of people, according to their rank, and upon the "lower orders of the people, according to what is supposed to be their fortune, by an assessment which varies from year to year." "The inferior ranks of people must in that country suffer patiently the usage which their superiors think proper to give them." In France the revolution of 1789 removed all slavery or serfdom and its natural adjunct arbitrary taxation, but here we still cling to some of the old cast-off clothing of servitude, and seem to dislike to part with the old familiar claims.

way of tax reform; for as the number of those who pay on an unfair valuation is greater than those who pay fairly, the probabilities are, that the former will consider it for their interest that no change shall be made, and being in the majority will control public opinion according to their own likeing.*

*Second.* It is certain that the average valuation of land and buildings—real estate—throughout the State, is not now in excess of fifty per centum of their fair marketable value; while the probabilities are, that the present assessed valuation is considerably less than this proportion. The true value of the real property of the State is, therefore, not less than twice its returned valuation, or $1,631,258,885 \times 2 =$ $3,262,517,770.

More than one-half of the population of the State is confined to cities and villages; and much more than one-half of the real estate valuation of the State is found in these localities. But of this real estate of cities and villages, almost the whole would be subject to the "building occupancy valuation;" and we can, therefore, safely assume that the property in the cities and villages of the State subject to such valuation would amount to more than $1,600,000,000; and if we assume further, that the agricultural portions of the State, representing $1,600,000,000, additional valuation of real estate, will present *twenty-five* per cent of that valuation subject to building occupancy valuation, we shall have an aggregate of property subject to such valuation of full *two thousand millions of dollars.* A rental on this valuation, taken at ten per cent, would be $200,000,000; three times this, for the valuation of personal property, assumed as the equivalent for all other valuation of such property in the hands of individuals, would be $600,000,000. If we now add to this the personal property of the moneyed corporations of the State, less value of real estate owned by the same, estimated at $200,000,000,† we have a total valuation representing personal property of $800,000,000; as compared with a present valuation of $445,000,000 of such property. And, as already intimated,

* Some years since a commission for revising the tax code of one of the States was appointed, and in due time presented the draft of many just amendments; none of which, however, were adopted. On asking the chairman of the commission, a man of great honesty and plainness of speech, how to account for the result, he made answer as follows: "That when the subject of reform came up, all who thought that by being made to pay taxes fairly, would be thereby made to pay more, were present and opposed the enactment of the new laws; while all those who felt that their taxes would be decreased, through the adoption of an honest system, trusted in the power of truth to do them justice, and stayed away." The result was as might have been anticipated.

† The capital, surplus and undivided profits of the national banks of the State in 1870, was $155,000,000; the capital of banks doing business under the laws of the State, Sept. 30th, 1870, $19,759,000; and the assets of New York State fire and marine insurance companies, in excess of all liabilities, except capital and script, Jan. 1, 1870, $61,958,998; total, $235,717,000.

such a valuation would probably be very considerably under the truth.

But that these estimates, indefinite and general as they must necessarily be, are really much less than the valuation of personal property likely to be attained to under the system of the commissioners, will appear evident from the following considerations:

Thus, an estimate given to the commissioners by persons whose judgment is to be relied on, is to the effect, that the present annual rental of the buildings of the compactly built wards of New York city, is considerable in excess of $100,000,000. Three times this amount would be $300,000,000. If we add to this the capital, surplus and undivided profits of the national banks and other moneyed corporations of the city — less real estate — estimated at $150,000,000, we shall have a valuation representing personal property of $450,000,000, as compared with a present personal property valuation of $306,000,000.

The assesment roll of New York city would then substantially stand as follows:

| | |
|---|---|
| Real estate, on the assumption that the present valuation is not in excess of fifty per cent of true value ..... | $1,500,000,000 00 |
| Shares of moneyed corporations..... | 150,000,000 00 |
| Building occupancy valuation..... | 300,000,000 00 |
| Total ..... | $1,950,000,000 00 |

A tax of one and a half per cent on this valuation would produce $28,250,000. If to this we add licenses for the sale of liquors at retail, $2,250,000, the total income of the city at the above rate of taxation, would be $31,500,000; or ten and a half millions more than would be requisite to meet the interest on the existing debt, and provide for all other reasonable expenditures.

But great as would be the gain in valuation here, the gain in other parts of the State would undoubtedly be in much larger proportions. Thus, taking Brooklyn for example, we find the value of the dwellings in that city, according to the census of 1865, returned at $120,000,000; the annual rental of which, at ten per cent (a low rate to cover insurance, repairs and taxes), would be $12,000,000; three times which would be $36,000,000. If we add to this the amount on which the corporations of the city of Brooklyn were assessed for 1870, $7,956,820, we have the total of $43,956,820, as compared with a present valuation of personal property for the whole city of $17,559,980, showing a gain of $25,396,840. And this result, it must be

remembered, is predicated on the rentals of dwellings alone, thus making it evident that where the rentals of buildings, other than dwelling are also included, the valuation will be still further increased.

It seems evident, therefore, that by the proposed system, the valuation of the property of the State of New York can be largely, as well as equitably, increased, and made, without difficulty, to approximate to its fair and just basis; thus affording all the revenue that may be needed at an average rate of taxation much less than the rate now prevailing.

### LIMITATION OF THE RATE OF TAX UNDER THE NEW SYSTEM.

The commissioners, in this connection, would especially direct attention to the fact, that by the twenty-third section of the fourth article of the code presented, they have provided, "*that the board of supervisors of no county shall levy a tax without special authority of the legislature, on any town, to exceed one per cent, nor in any ward, or city, to exceed two per cent on the total valuations of the assessment roll thereof.*"*

The reason of the introduction of this limitation, is in part to help insure conformity to the law on the part of assessors in respect to valuations, and more especially, because the commissioners are certain, that under the proposed system no higher rate of taxation can be required, except as the result of indefensible extravagance, or extraordinary contingencies, for which last, relief by the legislature is provided. The commissioners further estimate, that under their proposed system, the rate of State taxation (now about *seven* mills) will fall below *three* mills; and that in the larger cities, the most extravagant administration could not carry the aggregate of State, county, and city taxation above *one and a half per cent.* The proposed increase of valuation under the new system, coupled with the tax for occupancy as a substitute for personal property, will, therefore, be more than compensated for by a reduction of rates.

### GENERAL ADVANTAGES OF THE PROPOSED SYSTEM.

The general advantages of the system proposed by the commissioners over the system now existing may be briefly summed up as follows:

By making the standard of valuation and assessment, that which is

* "And no contract, obligation or liability, nor any number of contracts, obligations or liabilities, shall be entered into, made, or incurred by any town, ward or city, or by the constituted authorities thereof, which, in the aggregate, shall exceed, in any year, the amount that may be realized by taxes at the limitation of rate defined in this section, after deducting from said taxes the amount of the liability of the town, ward or city, in each year, for maturing interest or principal of bonded indebtedness, and for the State and county tax."

*certain, visible* and *tangible*, and disregarding that which is *invisible, incorporeal* and *intangible*, the incentive and opportunity for fraud, evasion and perjury would all, or in a great degree, be removed; the tax gatherer brought in communication with the smallest number of individuals; all personal inquisition, exposure of property, and necessity for oaths avoided; production of every kind, agricultural, mining and manufacturing, placed upon the most favorable conditions; shipping fostered; trade and commerce left untrammeled; while all the numberless vexations and difficult questions, which are sure in the future to grow out of the conflict of laws and the sovereignty of States respecting the *situs* of certain descriptions of personal property, would be transferred to such other communities as desire to enjoy them. The proposed plan, furthermore, will not permit the *dishonest* tax-payer (under oath) to arbitrarily assess other persons by the under valuation of his own property, or, on the other hand, compel the *honest* tax-payer to either criminate or over-burden himself; or permit assessors to assess in an arbitrary manner any one, inasmuch as all the proceedings must be according to a uniform law and on the basis of such testimony as is admissible in any court of law in a country where property can only be taken by well known and established rules of evidence.

In the plan proposed by the commissioners there is nothing arbitrary; the relations between the burdens upon city and country property are equitably adjusted; no class of property, under its operations, would be driven from the State, while residents and non-residents would be placed on an equality, inasmuch as both would be assessed on one and the same *indicia* of personal property, namely, the rental value of the premises occupied; instead of as now taxing the former doing business in the State and exempting the latter, under circumstances similar in every respect, with the single exception of residence.*

* The commissioners in this report, as will be noticed, have often quoted and referred to Adam Smith in support of the views by them presented; but they think they are even warranted in going further, and in claiming that this acknowledged authority, throughout all civilized countries, is in fact the real author of the proposed plan of taxing rentals, or rental values, as a substitute and an equivalent for direct taxes on personal property. Thus, an examination of his chapter, "taxes on rents of houses," will show, that he has not only fully set forth the views expressed by the commissioners, but has also anticipated their reasoning, and combatted all the objections that have been urged against their system. Recommending the tax upon the rent of houses, in addition to the tax upon real estate, which he likewise favors and commends for its certainty and equality, he says:

"The quantity of the land any man possesses can never be a secret, and can always be ascertained with great exactness;" and in urging objections to a tax upon money at interest, he says, "but the whole amount of the capital stock which he possesses is almost always a secret, and can scarce ever be ascertained with tolerable exactness." "An inquisition into every man's private circumstances, and an inquisition, which in order to accommodate the tax to them, watched over all the *fluctuations* of his fortune, would be a source of such continued and endless vexation as no people could support."

The changes proposed in the law in respect to personal property, are, moreover, by no means radical or violent. There is little of such property, apart from corporations, now subject to assessment; and the new system is certain to be more productive of revenue. If any little inequalities may arise from the change (and some must arise from any modification of tax laws), they will be but trifling compared to the inequalities that daily arise from the attempts to administer and carry out the existing system.

Again, under such a simple and liberal, though at the same time just and inflexible system of taxation as the commission propose, New York, instead of comparatively retrograding, as she has done within the last ten years, would be more than ever the Empire State of the Union. Could all foreign commerce be *specially* admitted into New York free of every tax, duty and restriction, none could doubt that the impetus which would be at once given to the growth and prosperity of the State would be something marvelous. But to do this, is not permitted under the Constitution of the United States to any State; but it is permitted to New York to place herself, if she will, in exactly similar relations to the domestic commerce, trade and manufacturing industry of the country, which exceed in importance and value its whole foreign commerce, in the ratio of at least fifteen to one. And this position in view of the tax legislation of all the other States, with the exception of Pennsylvania,* the commissioners claim New York will assume upon the adoption of their proposed new system; and they do not think, furthermore, that they are guilty of any unwarrantable extravagance in predicting, that if their views are recognized and adopted, the resulting prosperity of the State during the next decade, will be no ways inferior to that which attended the construction and opening of the Erie canal. And with this prosperity would come another result, which would be no less a matter of congratulation, namely, that all the present vexations, inequalities, inquisitions, self-exculpating oaths, and natural depravity supremacy of taxation would vanish, and be hereafter known only as subjects of ridicule and disagreeable tradition, ranking in importance and similarity in history, with the legislation and inquisition against witches.

*As to the *policy* of a tax on mercantile business in a city contending with rival cities for a fair share of the trade of the country, we cannot see any benefits to be expected from it. If we can make this city the great market of the nation, heavier taxes than those now imposed on real estate could be borne with less discomfort than the present rate, and wise legislation can do much to this end, but in the opinion of the committee, a city mercantile tax would be a step backward in attaining so desirable a result.—*Report Law Committee, Common Council of Philadelphia, Feb.* 1871.

### DIFFUSION OF TAXES.

One of the greatest obstacles which stands in the way of a reform in the local taxation of the United States, and consequently of the adoption of the views embodied by the commissioners in this report, has been the general acceptance of the theory *that in order to tax equitably and uniformly it is necessary to subject all property to assessment, and more especially that the exemption of any form of what is termed "money capital" is to grant a favor to those who possess such property and are best able to bear taxation at the expense of the remaining and poorer part of the community.*

The commissioners, however, utterly discard this theory (and it is properly termed a theory, for no country or community ever attempted to fully execute it), and hold, in opposition, *that equality of taxation consists in a uniform assessment of the same articles or class of property that is subject to taxation;* and they further maintain that *all taxes equate and diffuse themselves, and that if levied with certainty and uniformity upon tangible property and fixed signs of property, they will, by a diffusion and repercussion, reach and burden all visible, and also all invisible and intangible property, with unerring certainty and equality.**

*Simplicity in Taxation.*—The *one* principle in taxation which the civilized world, after years of experimenting, has gradually come to accept as fundamental, is to tax but a few things, and then to leave those taxes to diffuse, adjust and apportion themselves by the inflexible laws of trade and political economy.

Great Britain, commencing several hundred years ago with a system which contemplated taxing everything, has gradually reduced her tax list to some six or eight articles or sources under the customs, and to an equally limited number under her excise and local systems; and, with every degree of concentration, the relief experienced by the

* The method in which taxation diffuses itself has been thus illustrated by M. Thiers, in his work "Rights to Property." "In the same manner," he says, "as our senses, deceived by appearances, tell us that it is the sun which moves and not the earth; so a particular tax appears to fall upon one class, and another tax upon another class, when in reality it is not so. The tax really best suited to the poorest member of society is that which is best suited to the general fortune of the State; a fortune which is much more for the possession and enjoyment of the poor man than it is for the rich; a fact of which we are never sufficiently convinced. But of the manner, nevertheless, in which taxes are divided among the different classes of the State, the most certain thing we can say is: That they are divided in proportion to what each man consumes, and for a reason not generally recognized or understood, namely, that taxes are reflected, as it were, to infinity, and from reflection to reflection become eventually an integral part of the prices of things. Hence the greatest purchasers and consumers are everywhere the greatest tax-payers. This is what I call '*diffusion of taxation*,' to borrow a term from physical science, which applies the expression 'diffusion of light' to those numberless reflections, in consequence of which the light which has penetrated the slightest aperture spreads itself around in every direction, and in such a manner as to reach all the objects which it renders visible. So a tax which at first sight appears to be paid directly, in reality is only advanced by the individual who is first called upon to pay it."

whole population, and the impetus given to material development, has been all but universally acknowledged. In France, also, where the number of owners of real estate, in proportion to population, is greater than in any other country, the essential features of the concentrated system recommended by the commissioners prevails, for local, and to a limited extent, for general taxation. And in the case of the United States, it is to be further noted, that the national government, except under the exigencies of a great war, has always recognized in her tax laws the desirability of simplicity and concentration; and that now, although the present diffused system does not tax *directly* the one-fiftieth part of the property of the country, all parties are agreed that a further limitation of the sources of national revenue is most desirable.

But it is curious to note, that while no sensible person entertains the idea that the taxes levied by the national government on spirits, fermented liquors, or tobacco, or upon any imported articles, are paid by the producer or importer, except so far as he is a consumer of the same, the exactly opposite doctrine appears to prevail in the United States in respect to the incidence of local taxation; and the principle which has constituted the basis of most of the State legislation on this subject seems to have been, "that whatever is not taxed directly is necessarily exempt."*

## WHAT CONSTITUTES AN EXEMPTION?

But an exemption is "freedom from a burden or service to which others are subject or liable;" and if there is no primary taxation on

*As a most honorable exception to this experience, and as affording some evidence of a gratifying progress of enlightened views respecting the influence and distribution of taxes, we ask attention to the following extract of the report of the law committee of the common council of Philadelphia, presented February, 1871:

"All taxes imposed upon property, real or personal, will, if possible, be reimposed by the tax-payer upon the consumer of the article taxed, and, if practicable, a profit will be added to it. It is cheaper for consumers to pay the tax upon one than upon six articles. In cities, every person, either as tenant, owner or boarder, must contribute his or her portion in the taxation of real estate, and whilst absolute equality can never be obtained, in rating it according to value, the occupant of a dwelling valued at $60,000 pays sixty times the tax that is received from a $1,000 house, and business contributes directly by the occupancy of stores, warehouses and factory buildings."

"Money withdrawn from active circulation in the business or improvement of a city, induced by taxation or any other cause, is an injury to the inhabitants of all conditions in life, whether they be employer or employed, not only depressing existing operations, but in causing a limitation of their extension and advancement.

"Those of our citizens who possess capital not invested in business enterprise, and do not seek foreign investment, can easily escape taxation within your own boundaries, by the purchase of United States bonds, Pennsylvania State loan and Philadelphia city loan (untaxable), or reimpose the tax on real estate owners by investment in bonds and mortgages and ground rents, with agreements and covenants that the borrower or covenantor shall pay all taxes levied and assessed upon the principal, interest or rent."

"It is fair to presume that most of the capital at interest, held by citizens not engaged in active business, will, under the pressure of taxation, seek compensation by flight or investment in the securities above indicated, and that the weight of the levy would fall, in this city, on capital in business.

personal property, then there can be no exemption of it. We do not consider that putting a given article into the free list, under the tariff, is an exemption to any particular individual; but if we make the rule higher on one tax-payer or on one importer of the same article than on another tax-payer or importer, we grant an exemption. If all personal property is in State taxation upon the free list, it is nevertheless taxed through the real estate it occupies, or other agencies. It is not subject to primary taxation in England, and yet no one there doubts that it pays its proportionate burden in the form of reflected taxes or by "repercussion." We use the word "exemption," therefore, imperfectly, when we speak of "the exemption of *all* personal property;" for if the removal of the burden operates uniformly on *all* personal property, then there can be no primary exemption, but all such property becomes subject to uniform secondary taxation.

Adam Smith may be considered to have established, beyond all controversy, the principle that taxes, with a degree of infallibility, diffuse themselves when they are levied uniformly on the same article, and hence arises his deduction, *that the average profits of one investment are always equal to the average profits of other investments, risk and skill in management, in each, being taken into consideration.** This is the great principle which pervades his great work "Wealth of Nations;" and he even goes so far as to admit, that a tax upon labor if it could be uniformly levied and collected would be diffused, and that the laborer would be the mere conduit through which the tax would pass to the public treasury. Thus, he says: "While the demand for labor and the price of provisions, therefore, remain the same, a direct tax upon wages can have no other effect than to raise them somewhat higher than the tax." †

* As applied to the wages of labor, the truth of this principle is equally incontestible.—"The sewing girl performing her toilsome work by the needle at one dollar a day, the street sweeper working the mud with his broom at a dollar and a half, the skilled laborer at two and three dollars, the professor at five, the editor at five or ten, the artist and the songstress at ten or five hundred dollars a day are all members of the working classes, though working at different rates. And it is only the difference in their effectiveness that causes the difference in their earnings. Bring them all to the same point of efficiency, and their earnings also will be the same."—*W. Jungst, Cincinnati.*

† John Locke, in his treatise "on the standard of value," treats of taxation, and shows conclusively, that if all lands were nominally free from taxation, that the owners of lands would proportionally pay more taxes than now, because the same amount of money must continue to be collected in some form, and the average profits of lands would only be equal to the average profits of other investments; and further, that the expense and annoyance (another form of expense) would be increased if the tax were exclusively levied in the first instance upon personal property; and hence the land owner would be burdened with his proportion of the unnecessary expense and annoyance. He also shows that you may change the form of a uniform tax, but that you cannot change the burden; and that the change will increase the burden, if the new system is more expensive and annoying than the old. Locke wrote nearly a century before Adam Smith published his "Wealth of Nations;" and it would seem probable that Smith acquired his ideas relative to the average profits of investments from Locke.

And, pursuing the subject further, he continues: "*No tax can ever reduce, for any considerable time, the rate of profit in any particular trade, which must always keep its level with other trades in the neighborhood;*" and in the following language he solves the very question now at issue between the advocates of the existing system of local taxation in New York and the advocates of the new system: "*In order that the greater part of the members of any society should contribute to the public revenue in proportion to their respective expense, it does not seem necessary that every single article of that expense should be taxed.*"

In the city of New York, with its population approximating a million, it is believed that not *four* per cent of the inhabitants are subject to primary taxation;* but if the theory that taxes do not diffuse themselves is the correct one, then certainly the non-taxpayer can have no interest in an honest and economical administration of the city government, or in the reduction of city taxes; but on the other hand, we should be warranted in concluding, that he must be benefited by exorbitant taxes on other person's property; and in a distribution of the money collected, even if stolen by corruptionists, but spent with a lavish hand in giving him bread and employment. Taxation, furthermore, under the non-diffusion theory, becomes in reality a contest between classes; one class of real estate against another; one class of personal property against other classes; the classes possessed of no property against those who do possess it. The doctrine of the old philosopher Hobbes, "that war or conflict is the natural state of mankind," becomes also, by this supposition, embodied in taxation; the Greek brigand must be regarded as an equitable assessor; and the whole system of raising revenue for the State is reduced to a simple question of the exercise of arbitrary power.

## The Rational Principle of Taxation.

A more cheerful view of human nature would, however, lead us to believe that there is no natural antagonism of classes or interest among mankind, that capital is accumulated labor, and joint tenant

* As some evidence of the ratio that prevails elsewhere than in New York between the number of persons directly assessed for taxes on property and the aggregate of population, the following statistics of the city of Boston are worthy of attention: By the laws of Massachusetts a poll tax (usually two dollars) is assessed on every male inhabitant of the State, above the age of twenty, whether a citizen or an alien; and the payment of this tax is made a prerequisite to the exercise of suffrage. In 1869 the whole number of polls returned in the city of Boston was 54,242; of which number 43,587 were legal voters. But of the whole number of legal voters but 15,177 were assessed for property or for taxes, other than the poll or capitation tax. If we suppose that one-half the excess of polls over legal voters were assessed for property (an excessive estimate), then the whole number of persons who paid taxes in 1869 on property in the city of Boston would be 20,504 out of a total population in 1870 of 250,526, or 8.1 per cent.

with it, that whatever promotes the true interests of the one, is advantageous to the other, and that we are all jointly interested in low assessments, economical administration, equal protection to property and labor; and that whatever may be our position, high or low, rich or poor, we must by an irrevocable law, bear our part of the public burdens.

We may establish laws that will act as a prohibition of certain forms of investment or occupations; we may give special bounties to certain interest and occupations, and the effect of all our legislation, for benefit or injury, will finally be diffused on the entire community, if the systems engrafted into our laws are made permanent. The convictions of Galileo did not prevent the world from revolving; and so, no sophistry, no cunningly devised system of laws, no appeal to prejudice or class interest, can prevent taxes, imposed under permanent laws, from being diffused as the inevitable doom of man, or abrogate that invariable law of political economy, that the average profits of one class of investments must, in the long run, be the average profits of all other investments, risk and skill in management, being taken into consideration. These simple principles are a key to an equitable, uniform and economical system of assessment. The base of taxation must, however, be sufficiently broad to act as a tax, and not as a prohibition; and the tax should be levied by means of evidence admissible in courts that are instituted for the protection of life and property. Individuals imbued with freedom and self-respect, flee from everything that is arbitrary, and capital abhors it, and seeks shelter in other lands. When the assessor or other administrators are clothed with arbitrary and despotic power, the citizen tends to become a sycophant, and will often submit to fraud, corruption and plunder, rather than attempt an unequal contest with despotic authority.

It is fortunate, furthermore, for the human race that the enlightened governments of the world have not attempted as a rule, the primary taxation of every atom of personal property, or the atomic system of taxation, for man has some other and better duties to perform in this sphere of labor and toil, besides attempting to artificially tax everything.

### WHY NOT CONFINE TAXATION TO MONEY CAPITAL?

The question may be asked, if all taxes imposed under uniform laws diffuse themselves, why not tax *only* money at interest? The answer to this, however, would be, *first*, that such an assessment would pro-

bably act as a prohibition, and would produce no revenue; and *second*, that such a tax could not be levied with sufficient accuracy to divest it of the character of an arbitrary exaction, or of a species of partial confiscation of one man's property and the practical exemption of another person, through non-residence, indebtedness, etc., on the same class of investments.

### Money Property.

But, after all, says some objector, "notwithstanding your many and plausible arguments; your statement that all the world except the United States have done away with the old, atomic, inquisitorial system of taxation, and your demonstration that Pennsylvania and Philadelphia by pursuing a more liberal fiscal policy are advancing in wealth and population far more rapidly than New York, I do not like your proposed reforms, and for the reason mainly, that they exempt 'money property!'" It is most important, therefore, to inquire what is "money property," and also its relations to local taxation.

All capital or property is accumulated labor, labor being the source of all property. Hence any attempt to excite prejudice against capital or property, or to attack either, is an attack upon labor itself.

"Moneyed property" is generally understood to mean *evidences of debt*, which are not in a strict sense property; but *rights to property, or assignments of property*, according to the amount of interest of the creditor.

*What is a mortgage?*—Thus, a mortgage is a species of conveyance, and is no more property than a deed; and neither is property except to the extent of the value of the paper and the labor of writing or printing it, and still both are very valuable as conveying rights to property. The property is the real estate conveyed, or mortgaged, and a tax on the land, and another tax on the deed, or a tax on the land, and another tax on the mortgage, which covers the land, will, in effect, be a double tax on the land. This tax may be made a quadruple tax: first on the land, then on the deed of the land, then on the mortgage, which is on the land, and then on the lease which the landlord may grant to the tenant. The present laws of New York impose a tax on landlords who lease lands in fee, or for more than twenty-one years, on a principal which at seven per cent, will produce the amount of the stipulated rent. It is true, that landlords refuse to make long leases, and thus *evade* the tax; but a law might be made to require the payment of the tax on short leases, or on annual rentings. These

leases, if taxed, however, like all evidences of indebtedness would, in effect, impose double taxation upon the property which they represent.*

*To tax indebtedness, is to tax the borrower.*—If any one doubts that a tax on indebtedness is a tax upon the borrower, or the property which the indebtedness covers, that question can be easily solved by an *honest uniform* tax on all State, county, town and city bonds hereafter issued, by making them all subject to an annual tax of one, two or more per cent, and by providing that the tax shall be deducted at the time of the payment of the interest. Is there any one who believes that these bonds will sell in the market at the same high rate that they would command, if by law, they were free from taxation?

We can also test the effect of an honest, uniform tax upon mortgages, by providing that mortgages hereafter made, shall operate to reduce for assessment, the valuation of the land mortgaged to the amount of the mortgage, and that the mortgagor shall pay the tax on the mortgage, and deduct the tax from the principal or interest, when paid to the mortgagee. But who believes, under such a law, with the legal rate of interest at seven per cent, that any money would be loaned on mortgages in this State?

A somewhat curious piece of practical evidence in support of the truth of the position taken by the commissioners in respect to the taxation of mortgages, has been afforded by the recent experience of New Jersey. This State, as before stated, exempted in 1869, all mortgages from taxation in certain of her counties and cities which lie contiguous to New York city: but this legislation, although operating to draw capital away from New York and into New Jersey, was not primarily effected for any such reason, but was brought about in this wise. New Jersey, in the first instance, enacted an honest uniform law of taxing mortgages, and one, moreover, which could

* The following curious instance of hardship in taxing mortgages actually occurred in one of the counties of central New York within the last six years. A worthy farmer and his wife, finding themselves becoming incapacitated through age from taking practical care of their little farm, sold it for $5,000, and allowed the purchase-money to remain in the form of a mortgage, with the expectation of living on the interest paid annually by the purchaser from the profits of the farm. The town being very small, the fact of the sale and the consideration paid became known to every one, and the assessors were compelled, in opposition to their usual practice, to tax the old man to the full amount of the mortgage, as personal property. But the year in which this was done, happened to be a year in which the town, anxious to avoid a draft of men for the army, to which the old man was not liable, put up the rate of taxation to more than the legal rate of interest, in order to provide sufficient money to purchase recruits. The result was, that the poor old man and his wife found that not only was all their income from the mortgage swept away by the tax collector, but they were even obliged to go out for days' work, in order to pay a balance of taxation and provide means of support; and this too, while the identical farm for which the mortgage was given was taxed at one-fifth its true value, and other investments of other citizens of an invisible and intangible character undoubtedly escaped taxation altogether. And this we call equality in taxation.

with the utmost certainty be executed, and similar in principle to that above suggested; namely, that the person giving the mortgage should pay the tax on it, and deduct the tax from the principal or interest, in settling with the creditor. The result was, that all mortgages falling due were immediately foreclosed, and as no new loans, moreover, could be made, the inhabitants of the growing counties near the city of New York, wishing to borrow money on land, or to sell land, found themselves in an uncomfortable position; so much so, that if the law taxing mortgages in this section of the State had not been promptly repealed by the legislature, the issue would soon have become a predominant one in the State elections; and hence the explanation of one of the most curious statutes in the history of American legislation, which makes one tax law for one part of a State, and another and a different one for the remainder.* But the point of chief interest to be noted is, that it did not take the citizens of New Jersey a great length of time to find out that a borrower of money on a mortgage paid the tax, and that the lender was the tax collector, and only paid his part of a diffused tax, as all other persons living, consuming, buying or selling in the State must pay; and that if the borrower could not legally pay the lender a rate equal to other net profits of investments, he could not borrow. A little experimental legislation in New York will, therefore, effectually explode the vague theory that taxes *uniformly* levied do not diffuse themselves; and although it is true that the persons or property primarily taxed do not charge the entire tax over to others, this very fact nevertheless shows that the tax is diffused with *absolute equality* upon the persons who originally may pay the tax, and upon those who finally bear their portion of it.

*Loans on mortgages prohibited in Rome.*—Mommsen, in his "History of Rome," states that at one period the lending of money in that country on mortgages was prohibited, and it is apparent that a uniform taxation of mortgages in New York would amount to a prohibition as effectual as the prohibition which existed under the Roman law. The Roman patricians, in their legislation, wished to prevent the common people from becoming an independent yeomanry, and owning and acquiring real estate through the facilities of borrowing upon mortgages. No chimerical attempt had then ever been made to

* "And all mortgages upon estates, chattels or personal property, taxable by law, within said counties of Hudson, Union, Essex and the city of Brunswick, Middlesex county and the county of Passaic, except the townships of West Milford, Pompton and Wayne, for State, county, township and city purposes, shall be exempt from taxation, when in the hands of any inhabitant, corporation or association, residing or located in said counties or cities." Approved April 2, 1869; Laws of New Jersey, 1869, page 1225.

tax money at interest, and this purpose of having the soil cultivated on shares or by dependent tenants could best be obtained by a prohibition of all mortgages.

Now it needs no argument to show that a system of onerous taxation of mortgages must have a tendency to reënact the Roman policy, and in time we may thus see our State cultivated by a dependent tenantry and owned by a few capitalists; and it ought not to escape attention that this very transformation has already occurred to a great extent in New York city and other cities. Capitalists and institutions, except life insurance companies and savings banks, which are free from taxation, will not loan on mortgages, but will buy real estate and lease it for a term of years, because this investment pays a higher rate than money loaned on mortgage subject to the contingency or reality of taxation. The effect of the present law, even partially or loosely executed, has changed the form of investment,† but has not prevented capitalists from obtaining the average rate of profit of investments.

It is undoubtedly the true interest of the State, on both political and economical grounds, to encourage occupiers to become owners, who always give better attention and protection to their own property than to the property of landlords.

*Purchasers of United States Bonds not practically exempt from taxation.*—The purchasers of United States bonds, which are nominally exempt from taxation, are in effect taxed, and uniformly taxed

† The experience of taxing mortgages in New York is exactly what might have been legitimately expected. Capital which formerly found its way into real estate mortgages is now directed into other channels, and to such an extent that were it not for the provisions of law which exempt the mortgage investments of savings banks and life insurance companies from taxation, and compel these institutions to invest a part of their capital in such securities, money could now hardly be obtained in New York for the improvement of real estate on pledge of the property. Again, it was formerly a very general custom to embody in wills a provision that property bequeathed or to be held in trust should be invested in mortgages; but this custom, the commissioners are informed, is now almost entirely done away with, while executors and trustees are continually importuned by legatees to change the character of such investments on the ground that they no longer continue to afford a fair interest. In one instance the commissioners were frankly informed by a board of assessors that their feelings as men would not allow them to assess mortgages according to the strict provisions of the law, when they knew that by so doing they would deprive widows and orphans of almost their entire income. In another instance it was pleaded that the interests of a city would not allow its assessors to tax its local mortgages, inasmuch as so doing would inevitably restrict growth, and that a certain annual growth or land improvement was absolutely essential in order to prevent the rate of taxation, by reason of annually increasing expenditures, from becoming unbearable.

As an illustration of the manner in which such capital has been diverted, of late years, from employment in connection with real estate in New York, the commissioners would call attention to a report made to them, to the effect, that, while in 1859 the fire insurance companies of New York, with assets of $26,323,384, loaned on bond and mortgage $19,801,094; in 1869, with assets amounting to $53,722,655, they loaned on similar security, but $13,611,232. At the same time, the directors of the largest savings banks in the State, inform the commissioners that the applications made to them to loan on the security of real estate of unquestioned value, for the purpose of its improvement, are continually and largely in excess of the amount available for such investments.—*Report by commissioners*, 1870.

in the high price which they are obliged to pay for these securities by reason of their exemption from taxation. It is not only a sound principle of political economy, that a tax upon money at interest is simply a tax upon the borrowing price of the borrower,* causing an increased rate of interest, or a reduced price to be obtained for the obligation given; but this principle has been adjudicated by the highest court of the country, so far as a court of last resort can adjudicate a great principle in economic science. Thus, in the case of *Weston* v. *The City of Charleston* (2 Peters, 449), the Supreme Court of the United States, through Chief Justice Marshall, held that "*a tax on government stock is a tax on the power to borrow money on the credit of the United States.*" If, therefore, we except the borrower from taxation in the form of a decreased rate of interest, we grant him no special exemption or advantage, for his property, which is covered by the debt, has already in other forms been taxed, and the exemption will diffuse itself in the form of lower rate of interest, which will be the means of producing a higher price of labor, land, and personal property, until the exemption is completely diffused. Who will then be injured by taking the tax from money at interest? It is probable, that he who now adds the tax to the rate of interest, and charges the borrower, and does not pay it to the State, may lose by the change. He will be obliged to enter the open money market and pay the market rate, as the purchasers of government bonds now do, for evidences of debt that will be free from taxation in the hands of all persons; and the laws of trade will regulate his investment as they daily regulate the price of government bonds, and will bring down his securities to a rate of interest not much above the rate paid by the national government. The exemption applied to United States bonds, which is of no practical benefit to the present purchasers, in consequence of the increased price of the bonds, would be of no benefit if applied to the holder of other securities in an established and permanent system, except in freedom from the uncertainties and irregularities attending the exercise of arbitrary and irregular power. If the exemption is an

* A striking practical illustration of the truth of this proposition is to be found in the system adopted by Connecticut for taxing the savings' banks existing in that State. Thus, the State, in the first instance, imposes a tax of *three-fourths* of one per cent on the whole amount of deposits and stock in such institutions; and then, in consideration of this and all other taxes (*i. e.*, United States internal revenue tax of one-fourth of one per cent on dividends), the banks are permitted to add a compensatory amount to the legal rate of interest on all their loans, and to take the interest in advance; the effect of which is to throw the whole amount of taxation, with possibly some addition for profit, off from the bank on to the borrower, who in most, and perhaps a majority of cases, is a man of small means, who borrows for a purpose of local development; or, in other words, the whole system is an ingenious plan for imposing a little more taxation on a class which the State can least of all afford to tax, and that, too, not on their property, but upon their debts.

exemption of everything of the same class, it is perfectly equal and fair, and its effect is diffused and equated; and the tax on another article, taxed in lieu of the exempted class of articles, is likewise equated and diffused, and if invisible and imponderable evidences of debt cannot be taxed equally no injustice will arise if they are all free from primary taxation, and if the taxes of a permanent system are imposed on other things subject to positive and fixed rules of assessment. The daily price of United States bonds, therefore, is a constant lesson, that an exemption of a security from taxation is an exemption of the borrower, and the same law of political economy will rule in respect to both private, and public debts. Each State has, therefore, the power to put its borrowers on an equal footing with the general government, and without injustice or inequality toward the borrower or the lender.

### The Old and New Ideas in Taxation.

The first attempt made to tax money at interest was instigated against money lenders because they were Jews; but the Jew was sufficiently shrewd to charge the full tax over to the Christian borrower, including a per centage for annoyance and risk; and now most Christian countries, as the result of early experience, compel or permit the Jew to enter the money market, and submit, without let or hindrance, his transactions to the "higher law" of trade and political economy. But a class yet exist who would persecute a Jew if he is a money lender, and they regret that the good old times of roasting him has passed away. They take delight in applying against him, in taxation, rules of evidence admissible in no court since witches have ceased to be tried and condemned. They sigh at the suggestion that all inquisitions shall be abolished; they consider oaths, the rack, the iron boot and the thumbscrew as the visible manifestations of equality. They would tax primarily everything to the lowest atom; first for national purposes, and then for State and local purposes, through separate boards of assessors. They would require every other man to be an assessor or collector, and it is not probable that the work could then be accomplished with accuracy. The average consumption of every inhabitant of this State, annually, is at least $200, or in the aggregate, $800,000,000; and this immense amount would fail to be taxed if the assessment was made at the end of the year, and not daily, as fast as consumption followed production. All this complicated machinery of infinitesimal taxation and mediæval inquisition is to be brought into requisition for the purpose of taxing "money property," which is nothing but a myth. The money lender parts with his property to

the borrower, who puts it in the form of new buildings, or other improvements, upon which he pays a tax. Is not one assessment on the same property sufficient? But if you insist upon another assessment on the money lender, it requires no prophetic power to predict that he will add the tax in his transactions with the borrower. If a tax of ten per cent was levied and enforced on every bill of goods, or note given for goods, the tax would be added to the price of goods, and how would this form of tax be different from the tax on the goods?

"Money property" except in coin is imaginary, and cannot exist. There are rights to property of great value. The right to inherit property is valuable; and a mortgage on land is a certificate of right or interest in the property, but it is not the property. Land under lease is as much "money property" as a mortgage on the same land; both will yield an income of money. Labor will command money, and is a valuable power to acquire property, but is not property. If we could make property by making debts, it cannot be doubted that a national debt would be a national blessing. Attacking the bugbear of "money property" is an assault on all property; for "money property" is the mere representative of property. If we tax the representative, the tax must fall upon the thing represented.

A traveler in the Okefanokee swamp slaps the mosquitoes off his right cheek only to find that they immediately alight upon his left cheek; and that when he has driven them from thence, they return and alight on his nose; and that all the time he loses blood as a genuine primary or secondary tax-payer. And so it is with taxation. If we live in any country not wholly barbarous, we cannot escape it; and it is the fate of man to bear his proportion of its burdens in proportion to his expense, property and consumption. The main question of interest and importance in connection with the subject, therefore, is, shall we have an economical system (and hence a species of labor saving machine), and a uniform and honest system; or one that is expensive and encourages dishonesty and is arbitrary and inquisitorial? In either case the tax collector will act the part of the mosquito, and will get blood from all; but in an honest and economical system he will get no unnecessary blood.

Referring to the supplement to this report for a discussion in detail of some other point of importance, the commissioners would next ask attention to the code of laws, prepared in conformity with the instructions of the Legislature, as before cited.

# SUPPLEMENT.

## NATURE AND PROVINCE OF TAXATION, AND LIMITATIONS UPON THE POWERS OF THE FEDERAL AND STATE GOVERNMENTS IN RESPECT TO TAXATION.

The power of every complete sovereignty over the persons and property of its subjects is unlimited, and in every such sovereignty, therefore, the power to compel contributions for the service of the State, or as we may term it, "*to tax*," must be unrestricted. In the United States, however, the powers of the national government, and the powers of the separate States are materially limited in many respects. On the one hand, in virtue of an agreement of union accepted by all the States, and known as the federal Constitution, and on the other, in virtue of certain original powers retained by the States, and not delegated by them in entering the federal Union, to any other or higher sovereignty. It is proposed to inquire how far these limitations of sovereignty affect the powers of the national and State governments in respect to taxation? And first, of the limitations on the taxing powers of the States recognized and maintained by the federal government.

### Taxation of United States Agencies.

The most important of these limitations upon the taxing power of the separate States of the federal land, is that which excepts and exempts all agencies of the national government, of every name and nature. This limitation, the federal courts have held, exists by implication, not only in the Constitution of the United States, but in the structure of the national government itself; "for otherwise the States might impose taxation to an extent that might cripple, if not wholly defeat the operations of the national authorities within their proper sphere of action."*

*In the celebrated case of McCulloch *v.* Maryland, 4 Wheaton, 431, where the question involved was the right of the State of Maryland to impose taxes upon the operations, within its limits, of the Bank of the United States, created by the authority of Congress, Chief Justice Marshall uses the following language: "If we apply the principle for which the State of Maryland contends to the Con-

*Can Congress authorize the States to tax national instrumentalities?*—In the popular discussions which have occurred during the last few years in reference to the taxing of United States securities, the position has not been unfrequently taken, that it would have been just and expedient on the part of Congress, at the time of the creation of the present national debt, to have allowed the separate States to tax the evidences of such debt (*i. e.*, the bonds) in the possession of their citizens, subject to a limitation that the same should not be taxed at any different rate than other "moneyed capital." A full consideration of the whole subject will, however, suggest a doubt whether Congress possesses the power to grant any such authorization, inasmuch as to have done so would have been equivalent to authorizing the States to do an act which in itself is unconstitutional, a thing which it is self-evident that Congress cannot do. Thus, "*the power to tax*," says Chief Justice Marshall, in giving the opinion of the supreme court denying the right of Maryland to tax the Bank of the United States, "*involves the power to destroy;*" and in the case of *Weston* v. *The City of Charleston*, the same court, by the same eminent authority, held further, "*that if the right to impose a tax exists, it is a right which in its nature acknowledges no limits. It may be carried to any extent within the jurisdiction of the State or corporation which imposes it, which the will of such State or corporation may prescribe.*" For Congress, therefore, to have authorized the States to tax "national agencies," would have been equivalent to authorizing the exercise of a right to destroy; which right, the supreme court have held, cannot, from its nature, when once existing, be limited.

### IMPORTED GOODS IN ORIGINAL PACKAGES.

Another restriction upon the taxing powers of the States, imposed by *implication* by the Constitution of the United States, and *directly* by the decision and interpretation of the supreme court, has reference to *imported goods in original packages, in the possession of the merchant importer.* As this restriction upon the powers of the States

stitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the States. The American people have declared their Constitution and the laws made in pursuance thereof, to be supreme; but this principle would transfer the supremacy, in fact, to the States. If the States may tax one instrument employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax patent rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States."

has been recently called in question by officials in Massachusetts,* and practically denied by the actual assessment in that State of such property, the commissioners ask attention to the following recent exposition of this subject by a recognized authority. "The Constitution of the United States declares that "no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." Under this prohibition some difficulty has been experienced in indicating with sufficient accuracy for practical purposes, the point of time at which articles brought into the country from abroad cease to be regarded as imports in the sense of constitutional protection, and become liable to State taxation; but it has been said generally, that where the importer has so acted upon the thing imported, that it has become incorporated, and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the State: but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty upon imports to escape the prohibition in the Constitution. And it was also declared in the same case (*Brown* v. *Maryland*), that a State law, which for revenue purposes required a merchant to take a license, and pay fifty dollars, before he should be allowed to sell a package of imported goods, was equivalent to laying a tax upon imports. And it has been held in another case, that a stamp duty imposed by the legislature of California upon bills of lading for gold and silver, transported from that State to any port or place out of the State, was in effect a tax upon exports, and the

*The case relied on by the commissioners in their former report, to sustain their position in respect to the right of a State to tax imported goods, was that of *Brown* v. *The State of Maryland* (12 Wheaton, 449); the question involved being the legality of a license tax imposed by the State as a prerequisite to the right to sell an imported article. The court (Chief Justice Marshall) held, that this tax, *though indirect in form* (*i. e.*, a license on the person of the importer), was in fact equivalent to a duty on imports, and therefore illegal; and that the right to import carried with it the right to sell.

In reply to this, the chairman of the board of assessors of the city of Boston (see auditor's report of the city of Boston, 1871) makes the following statement:

"There is certainly a broad distinction between the prohibition of the right to *sell* an imported article, and the right to *tax* the same as property. The decision of the United States court was to the effect that the State could not enact a law that would prevent the sale of such property, and did not touch the question of the right to tax. In a recent decision of the supreme judicial court of Massachusetts (*Dunbar* v. *Boston*, 101 Mass., 317), where the question was raised that the commonwealth could not tax a stock of liquors, the sale of which, by her laws, she had declared illegal, the court sustained the tax, upon the ground that the case did not show that the goods could not be legally sold. As the law stood at the time the decision was given, but one class of the plaintiff's stock of intoxicating liquors could legally be sold; and that was his *importations in the original packages*."

law was consequently void." * (*Cooley's Constitutional Limitations.*)

## Limitations on the Taxing Power of the Federal Government in Respect to the States.

But if the States cannot tax the agencies or instrumentalities by which the federal government performs its functions, it would seem to clearly follow that for the same reasons the federal government cannot tax State instrumentalities or agencies. And so the courts of the United States have held, whenever this question has been brought before them for adjudication. Thus, in a case of recent decision (*Day* v. *Buffington, U. S. Circuit Court, Mass. District*), it was held that the salary of a State official, in this particular instance a judge of probate, could not be legally subjected to assessment for an income tax, under the laws of the United States authorizing the assessment and collection of internal revenue; and Congress, some years since, acting under the advice of the United States Supreme Court, repealed so much of the internal revenue act as previously required the affixing of stamps to State processes, warrants, commissions, etc. In the case of *Warren* v. *Paul*, 22 Ind., 279, the court used the following language: "The federal government may tax the governor of a State or the clerk of a State court and his transactions as an individual, but not as a State officer. This must be so, or the State may be annihilated at the pleasure of the federal government. The federal government may, perhaps, take by taxation most of the property in a State if exigencies require, but it has not a right by direct or indirect means to annihilate the functions of the State government."

* This case (*Almy* v. *California*, 24 Howard U. S. Reports, p. 169), arose under a statute of California, which imposed a stamp tax on bills of lading for the transportation of gold and silver from any point within the State to any point without the State. The question, as presented to the Supreme Court of the United States under this statute, was stated to be as follows: Is this stamp act, so required to be paid by State authority, an impost, or an export, within the meaning of the constitutional prohibition upon the States? It was held by an unanimous bench that the tax fell within the terms of the prohibition, or was in conflict with the clause of the Constitution giving Congress the right to regulate commerce with foreign nations. In a subsequent review of this case, 1868, Mr. Justice Miller stated that the case was well decided, but on a different ground, viz.: "That such a tax was a regulation of commerce; a tax imposed on the transportation of goods *from one State to another*, over the high seas, in conflict with that freedom of transit of goods and persons between one State and another, which is within the rule laid down in *Crandall* v. *Nevada* (6 Wallace U. S. Reports, 382), and with the authority of Congress to regulate commerce among the States." It, therefore, follows that bills of lading given for goods transported from one State to another are *inter-State instruments*, and as such cannot be subjected to State taxation; and it would further seem that bills, drafts, bonds, etc., made in one State and payable in another, are similar inter-State instruments, and as such cannot be taxed by State authority any more than bills of lading, the taxation of which by States, as above shown, has been decided to be unconstitutional.

TAXATION OF THE INSTRUMENTALITIES OR AGENCIES OF ONE STATE OF THE FEDERAL UNION BY ANOTHER STATE UNCONSTITUTIONAL.

It would seem, from the above referred to decisions and precedents, to follow that what is unconstitutional and unlawful for the federal government to do in respect to the States, is equally unconstitutional and unlawful for one State to do in respect to another and sister State; as, for example, the taxing of such an instrumentality of one State as its "borrowing power" by another State. And hence the commissioners hold, in conformity with the opinion of some of the best legal authorities in the country with whom they have conferred, that the bond of a State of the federal Union, issued for the purpose of raising money, or as the acknowledgment of indebtedness, is not taxable by any authority other than the State which issued it. And, in support of this assumption, the commissioners would ask attention to the following citations from a recognized authority:

In the case of *Weston* v. *The City of Charleston* (2 Peters, 449), the Supreme Court of the United States, by Chief Justice Marshall, held, *that a tax on stock of the United States, held by an individual citizen of a State, is a tax on the power to borrow money on the credit of the United States, and cannot be levied on the authority of a State consistently with the constitution.* "Can anything be more dangerous," he continues, "or more injurious, than the admission of a principle which authorizes every State and every corporation in the Union, which possesses the right of taxation, to burden the exercise of this (borrowing) power at their discretion?" A tax on the stock, or bonds of a State is, therefore, a tax on the borrowing power of such State.

The court further held, that a tax of this description was a tax upon contracts;* using the following language: "Congress has power to borrow money on the credit of the United States. The stock it issues

* What interpretation the Supreme Court puts upon the word "*contract*," as found in that clause of the Constitution of the United States, which provides "that no State shall pass any law impairing the obligations of contracts, is made clear by the following language employed by Chief Justice Marshall, in giving the opinion of the court in the celebrated case of the *Trustees of Dartmouth College* v. *Woodward*: "The term contract must be understood as intended to guard against a power of at least doubtful utility, the abuse of which had been extensively felt, and to restrain the Legislature in future from violating the right to property. That anterior to the formation of the Constitution, a course of legislation had prevailed in many, if not all, of the States, which weakened the confidence of man in man, and embarrassed all transactions between individuals, by dispensing with a faithful performance of engagements. To correct this mischief, by restraining the power which produced it, the State Legislatures were forbidden 'to pass any law impairing the obligations of contracts,' that is, of contracts respecting property, under which some individual could claim a right to something beneficial to himself; and that since the clause in the Constitution must, in construction, receive some limitation, it may be confined and ought to be confined, to cases of this description; to cases within the mischief it was intended to remedy."

is evidence of a debt created by the exercise of this power. *The tax in question is a tax upon the contract subsisting between the government and the individual.* It bears directly upon the contract. While subsisting and in full force, the power operates upon the contract the instant it is framed, and must imply a right to affect that contract. If the States and corporations throughout the Union possess the power to tax a contract for the loan of money, what shall arrest the principle in its application to every other contract? What measure can government adopt which will not be exposed to its influence? The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burden on the operations of government. It may be carried to an extent which shall arrest them entirely."

It is interesting to note that this decision establishes the economic principle, so far as a court of the highest resort can by its decision so establish such a principle, that when a State imposes a tax on its own obligations or on the obligations of its municipalities, it in effect *taxes its own borrowing power;* and to the extent of the tax reduces the value of its bonds or obligations when issued. The final result of all which procedure is that the State defrays the expense of the assessment, collection and disbursement of an odious, inquisitorial tax without deriving the least advantage from its imposition. All taxes, therefore, levied on evidences of debt, must be in effect burdens on the borrowers, who are usually the persons least able to sustain the weight of taxation. But if the taxation of the instrumentalities of one State by another State is constitutional, the commissioners would ask if such an act is not both inexpedient and unfriendly, especially when it is remembered that some of the States issue their State and municipal obligations, exempt from all taxation? Does not comity and good neighborhood require that the instrumentalities of one State should be respected by all the others as a part of the sovereignty of the State creating the instrument in question?

### Limitations of Territorial Sovereignty and Limitations of the Taxing Power Co-extensive.

It would seem to be in the nature of a self-evident proposition, although in fact it is by no means so regarded, that the power of a State to tax must be exclusively limited to person and property within its territory and legal jurisdiction. "*All subjects,*" says Chief Justice

Marshall, in giving the opinion of the Supreme Court, in the case of *McCullough* v. *Maryland*, "*over which the sovereign power of the State extends are objects of taxation; but those over which it does not extend are on the soundest principles exempt from taxation.* * * * The sovereign power of the State extends to everything *which exists by its own authority* or *is introduced by its permission.*"

"Every nation," says Wheaton, "possesses and exercises exclusive sovereignty and jurisdiction throughout the full extent of its territory. It follows, from this principle, that the laws of every State control, of right, all the real and personal property within its territory. The second general principle is, that no State can, by its laws, directly affect, bind or regulate property beyond its own territory. This is a consequence of the first general principle: a different system, which would recognize in each State the power of regulating persons or things beyond its territory, would exclude the equality of rights among different States, and the exclusive sovereignty which belongs to each of them." (Wheaton's International Law, chap. 2, § 2; Fœlix International Prisé, §§ 9 and 10.)

*Protection the correlative of taxation.*—The correlative of taxation, furthermore, is protection; or, in other words, according to the political theory of our governments, national and State, and in fact of every government claiming the title to be *free*, taxes are the compensation which property pays the State for protection. "*Taxes are a portion which each individual gives of his property, in order to secure and have the perfect enjoyment of the remainder.* Governments are established for the protection of persons and property within the limits of the State, *and taxes are levied to enable the government to afford and give such protection.* They are the price and consideration of the protection afforded." *Ingersol, J., Circuit Court of the United States, Duer* v. *Small.* "There is nothing poetic about tax laws. *When they find property, they claim a contribution for its protection.*" *Lowrie, Chf. Justice, Tinley* v. *The City, etc.*, 32 Penn., 381. Montesquieu, writing with the monarchial institutions of France mainly or solely in view, discusses this subject in his "Spirit of Laws" (Book 13, chap. 1.), as follows: "The public revenues are a portion that each subject gives of his property, *in order to secure or enjoy the remainder;*" and he further enunciates this common sense and equitable principle, which very curiously the majority of those who undertake to discuss taxation in the United States, wholly ignore, "*that the public revenues ought not to be measured by the people's abilities to give, but by what they ought to give.*" "And what they *ought* to give," as has

been remarked by another writer, "can of course only be measured by the benefit they are to derive."

These fundamental principles, defining sovereignty in respect to taxation, are, however, violated, either in theory or practice, by most of the States in the exercise of the taxing power; as, for example, in Massachusetts, where the law defines personal estate for purposes of taxation to include "goods, chattels, money and effects, wherever they are; ships, public stocks and securities, stocks in turnpikes, bridges, and moneyed corporations *within or without the State*."

The claim or argument, however, which the advocates of such a system set up in its defense is, that personal property has no *situs*, and, therefore, follows and adopts that of its owner. The inconsistency and absurdity of such a claim is well set forth in the following extract of an argument made before the committee of ways and means of the New York Assembly in 1862, by G. P. Lowrey, Esq., in respect to a proposition to *amend* the laws of New York in such a way as to neutralize a decision of the court of appeals, to the effect that visible, tangible property of citizens of New York, situated beyond the territory of the State, was without the jurisdiction of New York for the purposes of taxation:

"Inconsistency and absurdity struggle for the first place in this claim. Inconsistency, because we reject the rule, by taxing the personal property of non-residents when it is here; absurdity, because it is a confusion of essential ideas; an attempt to make a rule, whose very form admits the actual absence of the property, govern a case where the essential requisite is its actual presence. This most excellent rule of law, so meritorious as to have gained a place in the code of international comity, would be much abused by such an application. *Mobilia personam sequuntur* is one of the benevolent maxims of the law. It was invented for the convenience of the owner of property; never yet was it made the ground of a demand upon him. It is also a device of comity, by which the State holding jurisdiction of the property permits an act, done by the non-resident owner at his domicil, to have the same effect, touching it, as if done at the *locus sitæ*. It means, simply, that for the purpose of sale, distribution, or other disposition of the property, any act, agreement or authority, which is sufficient in law where the owner resides, shall pass the property where it is. The use of it is to facilitate affairs of commerce and the distribution of decedents' estates, by enabling parties to dispose of their property without embarrassment from their ignorance of the laws of the country where it is situated (*Catlin* v. *Hall*,

21 Vermont, 152.) It would be a more accurate rendering of the rule to say: "Personal property follows the law of the owner's domicil," and not as in effect claimed; that the law of the owner's domicil follows the property. "*In fictione juris equitas existat.*" "No fiction," says Blackstone, "shall extend to work an injury; its proper operation being to prevent a mischief or remedy an inconvenience, which might result from the general rule of law." At any attempt to misapply a fiction, it falls within and is terminated by that other authoritative maxim of logic and the common law, *cessante ratione legis, cessat ipsa lex.* "Fictions of law hold only in respect of the ends and purposes for which they were invented: when they are urged to an intent and purpose not within the reason and policy of the fiction, the other party may show the truth." Lord Mansfield.* But it may be said, that the State in taxing personal property situate beyond its territory, does not in fact tax the property, but the owner, over whom the State has jurisdiction in respect to such property. In answer to this claim the commissioners quote further from the argument of Mr. Lowrey above referred to.

This claim involves a dangerous inaccuracy, and "arises from a confusion of the idea of the assessment with the idea of the tax. These two stand upon altogether different bases. The *assessment* is to the person in respect to the property; but the *tax* is to the property in respect to itself alone. In the order of consequence a tax goes before an assessment. A tax stands upon an existing relation between the property and the State, as protector and protected, and is that portion of the public burden which the property ought to bear because of that existing *relation*. An assessment stands upon the existing relation between the property and its owner or possessor; it follows the tax, and is merely the method of securing it. The danger, in saying that the tax is to the *person in respect of his property*, is, that, by the form of the expression we justify an assessment upon a person for all property indiscriminately. We transpose the subjects, and make the law seek out the person, and then tax him according to his property, instead of first seeking property which it has a right to tax, and then as a secondary matter, a person to whom it may be assessed. Even if a knowledge of the property is obtained by inquiry addressed to the owner in the shape of a general assessment, still the rationale of the matter presupposes the right to tax on

* Examples of double or even greater taxation by different States at the same time on one and the same property; and the gross inconsistencies of procedure which follow the application to taxation of the principle that, "personal property follows the owner," have been already given in this report, see page 15.

account of the property and our relation to it directly. If we disregard this rationale, we may, perhaps, register an assessment where we are not entitled to levy a tax."

"The person to whom the assessment is made need not be the owner. He may be the agent, trustee, guardian, executor or administrator. This is because the property, which owes the tax by reason of being protected, has not hands wherewith to take from itself a portion of itself, to pay for protection to be accorded to the remainder. Therefore the law, following the property to get the tax, makes its demand upon whoever it finds in possession, without inquiring upon what interest the property is based. This it does, ignoring all persons beneficially interested in the title, even the owner himself. "Every person," says the statutes of New York, "shall be assessed, etc., for all personal property owned by him, including all property in his possession, *or under his control*, as agent, trustee, guardian, etc."

"Thus it will be seen that for the purpose of assessment, possession is a title superior to ownership. And I now reiterate, that according to the theory of our government, a tax stands upon the just obligation of all property to contribute to the support of the power which protects it; but that the assessment stands upon the possession or power of the person assessed, over the property taxed. This may be further illustrated. Movables can never be out of the actual or constructive presence of some one, and, therefore, there is always a person *in esse* to whom the assessment may be made. But the case is very different with unmovables, and therefore, lands are often taxed and assessed by their own name and designation, and specifically sold to satisfy the specific assessment, no person's name anywhere appearing in the proceedings.

"Keeping this vital distinction between an assessment and a tax clearly in view, the mind will come by easy steps to an understanding of how it is that a tax, to a man who has no property in the State, is a tax upon his person. Process is the eye of the law. Its vision is limited by territorial boundaries. Whatever does not exist within that limit, does not, for any purpose of law, exist at all. The rich man, whose property is in Europe, and the pauper, whose property is nowhere, are then equal, as persons, before the law. A tax upon a pauper would be a personal tax. A tax upon the rich man is, by unimpeachable parity of reason the same. Such a tax would be a gross solecism on our system. The philosophy of our plan of voluntary political association, is that all individuals, and all the values within a community, shall aggregate into one mass all the power

which they separately contain, which sum total shall constitute a sovereignty of the whole. This sovereignty—the soul of the State, which cannot be impaired, and the State survives—reflects back upon its constituents in detail, all that it has received from them. What it receives, and what it returns, is of two kinds, as to both source and object, viz., individual service *to* the government, and protection to the individual *from* it. Thus in his individual capacity, a man is bound to perform military service, and the State by the military arm, is bound to protect him from invasion. He is bound to do jury duty, and the authorities are bound upon his demand, to provide him a jury. He is bound to aid the sheriff, and the sheriff is bound to execute process in his favor by *posse comitatus* if necessary. These personal services correspond to those which in feudal times, the mesne lord holding a frank tenament, owed the lord paramount. They cannot be compounded for, for their value consists in their being rendered in kind. *Their performance is the only price which the citizen pays for his citizenship.* The terms are not only consistent and harmonious with our general scheme of government, but are highly politic. They are a liberal invitation to all men to come and add to ours their lives, their hopes, their strength, labor and courage, that we may build up a nation. To all political privileges we admit each one by virtue of his being a man, free born and of lawful age; we ask him nothing concerning his property, unless his property asks something from us."

*Tax on Breathing.*—In the time of Anastasius, emperor of the east, the capitation, or personal tax was called a tax on breathing, *animarum tributum*." The same expression might still be used with great propriety to designate the personal tax which States or towns impose on their citizens for property beyond their territory and jurisdiction; for such taxes are in fact taxes on breathing, or existence in the place where a person does his breathing and not where his property is located. So long as this rule exists, there can be little doubt that people will resort to those places where breathing is made easy, free, and least expensive; neither can there be any doubt, that if the State makes breathing difficult, it will pay the penalty in loss of population and wealth. People will always be most sensitive to any obstruction to breathing.

Again, if we are to tax personal property beyond the sovereignty and jurisdiction of the taxing power by reason of the possession of the person of the owner, and for the purpose of augmenting the revenue: "why not," says Mr. Lowrey, in the argument above referred to,

"carry the principle to its logical conclusion." Why not tax real property also? No reason can be given for a distinction, although *pretexts* claiming to be reasons may. One claim is as good as the other. A robber who should draw romantic distinctions between watches and purses would fail in business. If we are to be robbers in practice, let us, at least, secure some grace by honesty in our professions, and admit that what we thus take is not a tax received as the just recompense of a benefit conferred; but a compulsory levy, having its cause in our greed, and its justification in our power; and as these reasons are as good for a large levy as a small one, and the whole of a man's estate is greater than its part, why not take the whole?

"Still further; if we tax a man (in New York or Massachusetts) who has come from Connecticut or England to stay a year, for the property he has left behind, why not the man who has come for a week?" If we are to do business upon the principle that "might makes right," would it not be a brilliant stroke to station ourselves at all the avenues of ingress to the State, and cry, "stand and deliver to the passengers?"

This maxim, "*mobilia personam sequuntur*," which we call a a legal fiction, when perverted from its original and beneficent purpose, therefore, deserves no better than to be called a legal tie; and it is worthy of note also that in Rome where the fiction originated, its applicability to property was never held, according to Savigny, to extend beyond Roman territory.

From the above citations and arguments, the conclusion would seem to be inevitable, that when a State assesses property situated beyond its territory and jurisdiction, and which its laws and processes are not competent or able to either reach or protect; or, assesses one of its own citizens in respect to such property, the act has no claim to be regarded as taxation, but is simply *arbitrary taking*, no ways different in principle from confiscation.

### EFFECT OF THE FOURTEENTH AMENDMENT ON THE POWERS OF THE STATES IN RESPECT TO THE ARBITRARY APPROPRIATION OF PROPERTY.

It is curious to note, that prior to the recent amendment to the Constitution of the United States, there does not appear to have been any restrictions on the power of the States of the Federal Union to deal with the persons and property of their citizens in any manner it may have seemed to a majority of their voters to be expedient.

That this was so in regard to persons is evident from the fact that, prior to the thirteenth amendment to the Constitution of the United States, a large number of the States exercised without question the power of holding a portion of their population in slavery; and in the States where slavery did not exist, the abrogation of this right and the non-exercise of the power was the voluntary act of the people themselves, and might have been resumed at any time, in case a majority had so determined.

Now, while no higher privilege obviously could be claimed for property than was granted to persons, the right of the States to deal with the property of their citizens in any way they may have seen fit, was made the subject of a decision of the supreme court of the United States, in the case of *Baron* v. *The Mayor of Baltimore*, January, 1833 (7 Peters, 243). In this case the city of Baltimore, in the exercise of its corporate authority over the harbor, etc., so diverted certain streams of water that they made deposits of sand and gravel near the plaintiff's wharf, and thereby prevented the access of vessels to it. A writ of error was taken from the judgment of the Maryland court of appeals, refusing damages, to the supreme court of the United States, on the ground that this decision was in violation of the fifth amendment to the Constitution of the United States, which prohibits the taking of public property for private use without just compensation; the plaintiff contending further, "that this amendment, being in favor of the liberty of the citizens, ought to be so construed as to restrain the legislative power of a State, as well as that of the United States. The court, however, by Chief Justice Marshall, held that this amendment of the Constitution "*is intended solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the States;* which was equivalent to saying, viz., that if the several States choose to arbitrarily take or confiscate the property of any of its citizens, there was no higher sovereignty to restrain them.

At the close of the late civil war, however, when it was deemed desirable by Congress to impose some restrictions on the reconstructed States, so as to prevent the former disloyal element of their population in the event of the contingency of regaining legislative power, from dealing arbitrarily or unjustly with any class of their fellow-citizens who might happen to be obnoxious, the following clause was made a part of the fourteenth amendment, and through its adoption has become the supreme law of the land: "*Nor shall any State deprive any person of life, liberty or property, without due process of law.*"

Now the force of this amendment obviously depends upon the meaning of the last clause, "*due process of law;*" and it is also clear that "due process of law" does not mean a procedure in conformity with *any* law which a State legislature might enact, or with any provision which the people of a State might put in their Constitution; for if such be the interpretation of this phrase, then this clause of the fourteenth amendment referred to, would practically read as follows: "*Nor shall any State deprive any person of life, liberty or property, except in conformity with such laws as it may enact.*"

The general meaning of the phrase, "*due process of law*," and of the synonymous expression "*law of the land*," has, however, been made so often the subject of discussion and legal decision as to be in no sense a matter of doubt. Mr. Webster, in the Dartmouth College case, defined these terms as follows: "By the law of the land is most clearly intended the general law, which hears before it condems, which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not the law of the land." And in commenting on this definition, Justice Cooley, in his treatise on "Constitutional Limitations," uses this language: "This definition of Mr. Webster, is apt and suitable as applied to judicial proceedings, which cannot be valid unless they proceed upon inquiry, and render judgment only after trial. It is entirely correct, also, in assuming that a legislative enactment is not necessarily the law of the land. The words, "by the law of the land," as used in the Constitution, do not mean a statute passed for the purpose of working wrong. That construction would render the restriction absolutely nugatory, and turn this part of the Constitution into mere nonsense. "Due process of law", therefore, continues Mr. Cooley, after reviewing the interpretations of various other authorities, means, "such an exertion of the powers of the government as the settled maxims of law sanction, and under such safeguards for the protection of individual rights as these maxims prescribe."

"The very idea of taxation, the very elements of the terms tax—taxation—implies that it is an imposition or levy upon persons or property in due course or order, treating all alike in the same condition and circumstances. The burden of taxation must be equalized by this mode in order to preserve its character. It is in any view taking private property for public use; and it cannot be so taken, without an

equivalent both as to the government or the citizens. It is not competant for the government to convert private property to public use, by way of taxation and without compensation, any more than by any other mode." (*Redfield.*)

Now the exact applicability of the fourteenth amendment in restraining the several States in the exercise of their so-called "taxing powers," the commissioners hold to be this:

Taxation implies protection. It is held by every authority to be the equivalent for the protection which the goverment affords to the property of its citizens. When, therefore a State taxes property, either directly or indirectly, out of its territory and jurisdiction, which it cannot protect, and which its processes cannot reach, the act is not taxation, but a mere arbitrary exercise of power; not in accordance with any "process of law," and forbidden by the Constitution of the United States; and as involving a principle under the Constitution. Furthermore, the question of restraining a State from the exercise of such arbitrary powers would seem to be one legally within the right of any citizen aggrieved in virtue of the fourteenth amendment, to carry from the courts of his own State to the supreme court of the United States.

As another method by which a citizen of a State, agrieved by an imposition of an *ex-territorial tax*, might test the constitutionality of the same, the following is also worthy of consideration:

A citizen of Massachusetts taxed on personal property situated in Illinois, might obtain a writ of *certiorari* in an Illinois court, and raise the question, that, inasmuch as personal property is held in law to follow the person, the property in question was not taxable in Illinois. And after the courts of Illinois had rendered an adverse judgment, as they undoubtedly would, the owner taxed for the same property in Massachusetts, could obtain a writ of *certiorari* in the courts of that State, and raise the following questions:

1st. Want of jurisdiction in respect to the property on the part of the State of Massachusetts.

2d. Violation of the Constitution of the United States in denying full faith and credit to the "public acts (tax laws of Illinois) and judicial proceedings" of a sister State.

It needs no argument to prove that under the provisions of the Constitution of the United States, above referred to, both the laws and judicial proceedings of one State are as valid and as much to be respected in another State, as the laws and judicial proceedings of the latter State itself. If the courts of

Massachusetts, following precedents in that State, should decide that personal property situated beyond the State, follows the person residing in Massachusetts, and so disregards the judicial proceedings and public acts of Illinois, a question under the Constitution of the United States would arise, which would give jurisdiction in the United States Court. And as one and the same thing cannot occupy two places at the same time, the federal court must finally decide in which State is the *situs* of the property for taxation in the case presented. The principle involved in this case would seem to be identical with an attempt on the part of a State to convict a citizen for an offence committed beyond her jurisdiction, in respect to which judgment had already been rendered in a sister State, where the offence had been committed.

As further bearing upon this subject, reference is made to the following judicial decisions: The court of errors of New York, some years ago, decided that private property could not be forcibly taken for a private road, even if compensation was made by the party benefited; because the act was the taking property arbitrarily, and not according to due process of law.

The national bank act acknowledges, and the courts of the United States have so held, that a bank has a *situs* and its shares a *situs* where the bank is located, and not where the stockholders reside. The national bank act, therefore, discards the usual State principle of taxation, that personal property follows the owner.

The principle that *two States cannot tax at the same time the same property, and that a State cannot tax property and rights to property lying beyond her jurisdiction*, has been also affirmed by the Supreme Court of the United States (December, 1868), in the case of *The Northern Central Railroad* v. *Jackson* (7 Wallace, 262). The railroad corporation in question, extending from Baltimore in Maryland to Sunbury in Pennsylvania, was the result of the consolidation of four railroad companies; one incorporated by the State of Maryland and three by the State of Pennsylvania. The latter State imposes a tax of three mills per dollar of the principal of each bond issued by said road, which tax the company, at their office in Baltimore, deducted from the coupons of the bonds of said consolidated road held by Jackson, an alien, resident in Ireland. The court, by Mr. Justice Nelson, decided adversely to the tax, on the ground that the bonds were issued upon the credit of the line of the road, a portion of which was within the jurisdiction of the State of Maryland, and that the security, bound and pledged for the payment of

the bonds and of the interest on them, embraces the Maryland portion of the road equally with that portion situated in the State of Pennsylvania; respecting which condition of affairs, the court used the following language:

"It is apparent, if the State of Pennsylvania is at liberty to tax these bonds, that to the extent of this Maryland portion of the road she is taxing property and interests beyond her jurisdiction. Again, if Pennsylvania can tax these bonds, upon the same principle Maryland can tax them; this is too apparent too require argument. The consequence of this, if permitted, would be double taxation of the bondholder. The effect of this taxation is readily seen; a tax of three mills per dollar of the principal, at an interest of six per centum, payable semi-annually, is ten per centum per annum of the interest: a tax, therefore, by each State, at this rate amounts to an annual reduction from the coupons of twenty per centum; and if this consolidation of the line of the road had extended into New York or Ohio, or into both, the deduction would have been thirty or forty. *If Pennsylvania must tax bonds of this description, she must confine it to bonds issued exclusively by her own corporations.* Our conclusion is, that to permit the deduction of the tax from the coupons in question would be giving effect to the acts of the Pennsylvania legislature upon *property and interests lying beyond her jurisdiction.*"

# CODE OF LAWS

FOR THE

## VALUATION AND ASSESSMENT

OF THE

# REAL AND PERSONAL PROPERTY

OF THE

## STATE OF NEW YORK.

PREPARED BY

THE COMMISSIONERS FOR THE REVISION OF THE LAWS FOR THE ASSESSMENT AND COLLECTION OF TAXES, IN CONFORMITY WITH AN ACT OF THE LEGISLATURE OF NEW YORK, PASSED, MAY, 1871.

# AN ACT

To amend titles one and two, chapter thirteen of the Revised Statutes, in relation to property liable to taxation and the assessment thereof.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Titles one and two, chapter thirteen, part one, of the Revised Statutes, are hereby amended so as to read as follows:

TITLE 1. Of the property liable to taxation.

TITLE 2. Of the place and manner in which property is to be assessed.

## TITLE I.

### *Of the Property Liable to Taxation.*



SECTION 1. All lands within this State, whether owned by individuals or corporations, shall be liable to taxation on their full, real and actual value, subject to the exemptions hereinafter specified.

§ 2. The term "land," as used in this chapter, shall be construed to include the land itself, all buildings and other articles erected upon or affixed to the same, all wharves or piers, including the value of the right or grant to collect wharfage or dockage thereon; all bridges, railroad structures, cuts, embankments, culverts, sidings and tracks, and the iron thereon, and including the iron and other fixtures owned by any railroad company, and permitted or authorized to be laid or placed in any public roads, streets or grounds; all gas and water pipes owned by any incorporated company, including said pipes laid in any public street or place; all trees and underwood growing thereon, and all mines, minerals and quarries in and under the same, except mines belonging to the State; and the terms "real estate," and "real property," whenever they occur in this chapter, shall be construed as having the same meaning as the term "land," thus defined.

§ 3. The following personal property shall be liable to taxation:

1. The shares of banks, or banking associations, organized under the national banking law, located and doing business within this State.

2. The shares and corporate franchises of banks, or banking associations or individual bankers, doing business under the general banking law of this State.

3. The shares and corporate franchises of all trust companies doing business within this State and organized under the laws thereof.

4. The shares and corporate franchises of all other corporations, divided into shares, organized under the laws of this State, and engaged in the business of receiving deposits.

5. The shares and corporate franchise of all fire, inland and marine insurance companies, organized under the laws of this State, and the privileges of foreign fire insurance companies.

§ 4. All real estate subject to taxation shall be liable to an additional or supplemental taxation, on an additional or supplemental assessment of a sum equal to three times the rent or rental value of all buildings thereon, for the length of time actually occupied, during the year terminating December 31st previous to making the assessment, or for the parts of said buildings occupied as aforesaid; but no assessment shall be made, under the provisions of this section, in reference to buildings or parts of buildings occupied by the corporations enumerated and made subject to taxation on their corporate franchises and privileges in section three of this title. The tax imposed according to the provisions of this section, shall be known as the "building occupancy" tax, and shall be a charge and a lien the same as other real estate taxes on the lots or parcel of land on which

the occupied buildings are situated, and may be collected by distraint on the personal property of the person to whom said tax may be assessed, or by sale of the premises, or otherwise, and in the same manner as other taxes upon real estate are collected.

§ 5. The building occupancy assessment shall be deemed to be the equivalent or estimate of the value of the personal property owned, in the possession or under the control of the occupiers, as owners or tenants (and not as boarders or lodgers), of buildings or parts of buildings, or the index of said occupiers' expense or consumption made liable to taxation.

§ 6. Any owner of real estate paying, or his real estate being subject to the building occupancy tax, may add the tax, or the *pro rata* proportion of it, to the rent payable in respect of such occupied buildings, and he shall be entitled to collect the said tax from the tenant by distraint, and he shall have the same remedies for recovering the same as for rent in arrears, unless there is a contract between the parties that the landlord shall pay the building occupancy tax.

§ 7. "Taxable property" shall be construed to mean taxable assessments or valuations, and "building occupancy valuation" shall be construed to mean a sum equal to three times the rent or rental value of the buildings, or parts of buildings, occupied for the previous year, which are subject to building occupancy valuation by the provisions of this title; and all annual or other direct taxes levied on "taxable property," by a rate or per cent, shall be levied upon the aggregate of the real estate, personal and building occupancy valuations within the district or territory where the tax may be levied, and assessed according to the provisions of this chapter.

§ 8. Lands sold by the State, though not granted or conveyed, shall be assessed and taxed in the same manner as if actually conveyed.

§ 9. The following property shall be exempt from taxation:

1. All property not made subject to assessment and taxation by laws hereafter enacted, or by title first and second of this chapter.

2. All property exempt from taxation by the Constitution of this State, or under the Constitution of the United States.

3. All property belonging to this State, any municipal corporation thereof, any town, county, school district, or the United States.

4. Every building owned and occupied by an incorporated college, academy, or other incorporated seminary of learning; every building for public worship, and the several lots whereon such buildings are situated.

5. The property of charitable and other corporations exempt from taxation according to the provisions of their charters.

6. The property of every public library.

7. Cemeteries, tombs, and rights of burial, so long as the same shall be dedicated for the burial of the dead, and the property of a "soldier's monument association."

8. Every poor-house, asylum or hospital for the poor, every almshouse, house of industry or industrial school-house, every house belonging to and occupied by an incorporated company for the reformation of offenders, or to improve the moral condition of seaman.

9. All lands belonging to any agricultural society, and permanently used for show grounds, during the time so used.

10. And Indian reservation lands while in the possession of Indians in tribal relations and exercising tribal authority.

## TITLE II.

### *Of the Manner in which Property shall be Assessed.*



### ARTICLE FIRST.

### *Of the Manner and Place of Assessment of Building Occupancy Tax on Land.*



SECTION 1. Land shall be assessed for the building occupancy valuation to the same party to whom it shall be assessed in the assessment roll for the real estate valuation.

§ 2. In estimating rent or rental value of any assessably occupied building, the actual and *bona fide* rent thereof, if the said rent has been a fair and equitable one, and proportionate to the value of the

property, shall be the basis of the assessment, but, if otherwise, or if the building, during the previous year, has been occupied by the owner thereof, or has not had a known marketable rental value, or an established rental value by comparison with similar buildings actually rented in the immediate neighborhood then the rent shall be estimated at a sum equal to ten per cent of the value of the building.

§ 3. The building, for the purpose of estimating the building occupancy valuation, shall be deemed to include the land upon which it is constructed, and so much of the unbuilt portion of the lot as is usually used as a yard, or court-yard, or a means of convenient access and occupancy of the building, for the purpose for which it is used, but not to exceed one acre of land adjacent or contiguous to one main building, and the main building shall be deemed to include all stables, barns or other out-buildings on the same lot of land.

§ 4. The building occupancy valuation shall be assessed in one aggregate sum for all occupied buildings, liable to assessment, in amount equal to three times the rent or rental value of the parts thereof occupied for the previous year, on each lot or quantity of land entered in the assessment roll, and said aggregate building occupancy valuation shall be entered thereon on the same line as the real estate valuation, but in a separate column, under the caption of "building occupancy valuation."

## ARTICLE SECOND.

### *Manner of Assessing the Shares and Corporate Franchises of specified Moneyed Corporations.*



SECTION 1. The shares and corporate franchises of the moneyed corporations or associations enumerated in divisions 1, 2, 3 and 4, of section 3, title 1 of this chapter (national and State banks, and individual bankers doing business under the general banking law of this State, trust companies, and other corporations of this State divided into shares, and authorized to receive deposits, and fire, inland and marine insurance companies), shall be liable to taxation in the town or ward in which said corporation shall be located, on the par amount

of said shares, less the proportionate value of the real estate belonging to said corporations, but the assessment shall be made on the assessment roll, in the name of each corporation, in one sum, less the value of the real estate belonging to such corporation, for the shares and corporate franchises of said corporation, and the tax shall be paid by the corporation, and in default of payment the same remedies shall be enforced against the corporation as for the collection of other taxes.

§ 2. The shares of such corporations or associations, made liable to taxation, shall be subject to the tax paid thereon by the corporation or the officers thereof, and said officers may retain so much of any dividend or dividends belonging to stockholders as may be necessary to pay any taxes assessed under this title, and the corporation and the officers thereof shall have a lien on all the shares in the corporation or association, and on all the rights and property of the shareholders in the corporate property for the payment of said taxes.

§ 3. There shall be kept at all times, in the office where the business of such corporation or association shall be transacted, a full and correct list of the names and residences of all the stockholders therein, and of the number of shares held by each; and every individual banker doing business under the general banking law of this State shall keep a list of the amount of his capital, and if he has partners, the amount of their capital invested in such banking business; and each $100 of such capital, for the purpose of this act and for the purpose of taxation, shall be held and regarded as one individual share in such banking business; and the aforesaid lists shall be subject to the inspection of the officers authorized to assess taxes, during the business hours of each day in which business may legally be transacted.

§ 4. Every foreign fire insurance company, as defined in chapter 888 of laws of 1871, shall be assessed and taxed on the privilege of doing business in this State, at the place of the principal office of said company in this State, at a sum equal to the capital as certified, according to the provisions of said chapter 888 of Laws of 1871.

## ARTICLE THIRD.

### *Of the Manner of Assessing Real Estate.*

3. Unoccupied lands not owned by residents denominated "lands of non-residents."
4. No tax void in consequence of error in name of owner, occupant or classification of land.
5. Real estate of incorporated companies, where taxed.
6. Where land and bridges to be assessed when divided by division line of town.
7. Manner of assessing water and gas pipes owned by incorporated companies.
8. The assessment of real estate of railroads, including superstructure, in public highways.
9. Duty of town assessors to apportion railroad valuation among school districts.
10. The apportionment shall be filed in town clerk's office.
11. In case of neglect of assessors, the supervisors shall make an apportionment.
12. Town clerk shall furnish certified statement of railroad apportionment and location.
13. In case of alteration of school district, who may change the railroad apportionment.
14, 15, 16. Manner in which lands of non-residents are to be designated in the assessment roll.
17. When necessary, assessors to have survey made of the lands of non-residents.

SECTION 1. Every person shall be assessed in the town or ward where he resides, when the assessment is made, for all lands then owned by him within such town or ward, and occupied by him or wholly unoccupied.

§ 2. Lands occupied by a person other than the owner may be assessed to the owner or occupant, or as lands of non-residents.

§ 3. Unoccupied lands, not owned by a person residing in the ward or town where the same are situated, shall be denominated "lands of non-residents," and shall be assessed as hereinafter provided.

§ 4. No tax or assessment shall be void in consequence of any lands being erroneously classed or omitted from classification as the lands of non-residents, or as the lands of unknown owners, nor in consequence of the omission of the name of the rightful owner or occupant on the assessment roll, but in such cases no tax shall be collected except from the real estate assessed.

§ 5. The real estate of all incorporated companies, or the real

estate of which said companies may be occupants, may be assessed to said companies in the town or ward in which the same may be situated, in the same manner as the real estate owned or occupied by individuals, residents of the town or ward, is assessed.

§ 6. When the line between two towns or wards divides a farm or lot, or divides any bridge owned by any company, corporation or individual, each part shall be assessed in the town or ward in which the same shall be situated.

§ 7. All gas and water pipes owned by any incorporated gas or water company, and laid in any public streets or grounds, or laid in any private lands or grounds, shall be assessed to said company at the full value thereof, for the purpose used. The valuation of said gas or water pipes shall be entered in the column of real estate valuations, on the assessment roll, in one sum, for all the gas or water pipes belonging to any incorporated company, in the district for which the assessment may be made, and the words "gas pipes" or "water pipes" shall be entered in the column of quantity or description of lands.

§ 8. In fixing the valuation of the real estate of any railroad corporation, the assessors shall estimate the property for the purpose used, and as part of a complete and continuous line of railroad, including the value, at the time, of the assessment, of all tracks, roadbeds, embankments, cuts, lands, buildings, culverts, bridges and superstructures, and superstructures shall include all iron chairs, rails, spikes, frogs and switches laid or affixed to any public streets, highway or public ground, and said superstructure, in public grounds or highways, shall be entered on a separate line of the assessment roll, the valuation entered in the column of real estate valuations, and the words "superstructure in public grounds" entered in the column of quantity or description of land.

§ 9. It shall be the duty of the town assessors, within fifteen days after the completion and review of their annual assessment list, to apportion the valuation of the property of each and every railroad company which appears on such assessment list, among the several school districts in their town in which any portion of said property is situated, giving to each of said districts its proper portion, according to the proportion that the value of the said property in each of such districts bears to the value of the whole thereof in said town.

§ 10. Such apportionment shall be in writing, and shall be signed by said assessors or a majority of them, and shall set forth the numbers of each district and the amount of the valuation of the property

of each railroad company, apportioned to each of said districts; and such apportionment shall be filed with the town clerk by said assessors or one of them, within five days after being made; and the amount so apportioned to each district shall be the valuation of the property of each of said companies, on which all taxes against said companies in and for said districts shall be levied and assessed, until the next annual assessment and apportionment.

§ 11. In case the assessors shall neglect to make such apportionment, it shall be the duty of the supervisor of the town, on the application of the trustees or board of education of any district, or of any railroad company, to make such apportionment in the same manner and with the like effect as if made by said assessors.

§ 12. The town clerk shall, whenever requested, furnish to the trustees or board of education of each district, a certified statement of the amounts apportioned to such district, and the name of the company to which the same relates.

§ 13. In case any alteration shall be made in any school district, affecting the property of any railroad company, the officer or officers making such alteration shall, at the same time, determine what change in the valuation of the said property in such district would be just on account of the alteration of the district, and the valuation shall be accordingly changed.

§ 14. The lands of non-residents shall be designated in the same assessment roll, but in a part thereof separate from the other assessments, and in the manner prescribed in the two following sections.

§ 15. If the land to be assessed be a tract which is subdivided into lots, or be part of a tract which is so subdivided, the assessors shall proceed as follows:

1. They shall designate by its name, if known by one, or if it be not distinguished by a name, or the name be unknown, they shall state by what other lands it is bounded.

2. If they can obtain correct information of the subdivisions, they shall put down in their assessment rolls, and in a first column, all the unoccupied lots in their town or ward, owned by non-residents, by their numbers alone and without the names of their owners, beginning at the lowest number and proceeding in numerical order to the highest.

3. In a second column, and opposite to the number of each lot, they shall set down the quantity of land therein liable to taxation.

4. In a third column, and opposite to the quantity, they shall set down the valuation of such quantity.

5. If such quantity be a full lot, it shall be designated by the number alone; if it be a part of a lot, the part must be designated by boundaries, or in some other way by which it may be known.

§ 16. If the land so to be assessed be a tract which is not subdivided, or if its subdivisions cannot be ascertained by the assessors, they shall proceed as follows:

1. They shall enter in their roll the name or boundaries thereof, as above directed, and certify in the roll that such tract is not subdivided, or that they cannot obtain correct information of the subdivisions, as the case may be.

2. They shall set down in the proper column the quantity and valuation as above directed.

3. If the quantity to be assessed be the whole tract, such a description by its name or boundaries will be sufficient; but if a part only is liable to taxation, that part or the part not liable must be particularly described.

4. If any part of such tract be settled and occupied by a resident of the town or ward, the assessors shall except such part from their assessment of the whole tract, and shall assess it as other unoccupied lands are assessed; and if they cannot otherwise designate such parts, they shall notify the supervisor of the town, who shall cause a survey and two manuscript maps to be made, for the purpose of ascertaining the situation and quantity of every such unoccupied part.

5. One of those maps shall be delivered by the supervisor to the county treasurer, to be by him transmitted to the comptroller, and the other shall be delivered in like manner to the assessor.

6. The assessors shall then complete the assessment of the tract, and shall deposit the map in the town clerk's office for the information of future assessors. And the expense of making such survey and maps shall be immediately repaid to the supervisor out of the county treasury, and it shall be added by the board of supervisors to the tax on the tract, distinguishing it from the ordinary tax.

§ 17. Whenever it shall be deemed necessary by the assessors of any town to have an actual survey made to ascertain the quantity of any lot or tract of land of non-residents which is divided by the town line, they shall notify the supervisor, who shall cause the necessary surveys to be made at the expense of the town.

## ARTICLE FOURTH.

*Manner of Making the Assessment Roll, and the duties of Assessors and Supervisors, and General Provisions.*

24. To add up and set down aggregate valuations, and furnish certificate to Comptroller and State tax commissioner.
25. To cause a copy of corrected roll to be delivered to each supervisor.
26. To cause a copy to be delivered to the collector of every town, ward or city.
27. Warrant of supervisors to be annexed; its form.
28. Account of rolls and warrants to be sent to county treasurer.
29. Warrants to conform to the laws respecting cities.
30. Collectors' fees not to be added to the list or warrant; existing laws for the collection of taxes re-enacted.
31. When tenant paying tax, may sue therefor or retain out of rent.
32. Assessors in cities to keep books of divisions of property, and other books open to public inspection.

SECTION 1. The assessors or tax commissioners in each town, city or ward, may divide the same, by mutual agreement, into convenient assessment districts, not exceeding the number of assessors in such town or ward.

§ 2. Between the first days of May and July, in each year, they shall proceed to ascertain the names of all the taxable inhabitants, in their respective towns, cities or wards; and they shall also ascertain, by careful examination, all the taxable property, and by a careful estimate, the full and actual value thereof, within the same; but the annual assessment, in all incorporated cities and villages, shall be made at the time, or within the time, now designated by law in respect to said cities and villages, or until hereafter changed by law.

§ 3. They shall prepare an assessment roll, composed of seven columns, in which they shall set down according to their examinations and estimates:

1. In the first column, the names of all the taxable inhabitants and corporations in the town or ward, as the case may be.

2. In the second column, the quantity of land to be taxed to each person or corporation.

3. In the third column, the full, real and actual value of such land, according to the definition of the term land, as given in the first title of this chapter.

4. In the fourth column, the building occupancy valuation, as defined in titles one and two of this chapter.

5. In the fifth column, the taxable or assessable value of shares, privileges and corporate franchises of moneyed corporations and

companies whose shares, privileges and corporate franchises are liable to taxation and assessable to said corporations or companies.

6. The sixth column shall be reserved to be filled, as hereinafter provided, with the amount of the tax, at the rate levied, on the real building occupancy and personal valuation.

7. The seventh column shall have the caption of "Remarks of Dissenting Assessors," and every assessor, tax commissioner, or other officer, acting as a member of a Board of Review of Assessments, shall, if he dissents to any valuations, established by a majority of the members of said board, write his name, or make suitable ditto marks under his name, in said column, on the line of the assessment to which he object, and shall designate the real, the building occupancy, or the personal valuation to which he dissents, or he shall, by appropriate ditto marks, indicate the valuation or valuations to which he dissents.

§ 4. Where a person is assessed as trustee, guardian, executor or administrator, he shall be assessed as such, with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment.

§ 5. In assessing lands as real estate or for building occupancy valuation in any ward, city, village or town, in which any officer of said city, village or town, or any county treasurer, is authorized by law to sell said lands, on default of payment of taxes, the assessors shall place in the first column of the assessment roll, the name of the owner or occupant of the land, if known, and if unknown, they may enter in said first column the word "unknown," and then proceed in the second column (the column of quantity and description) to describe the land to which the name of the owner or occupant, or the word "unknown" relates, by a brief and proper description, or by dimensions and boundaries, by ward map numbers, by established street numbers, or by any other proper designation which will indicate the land intended to be assessed and taxed.

§ 6. The assessors shall complete the assessment roll on or before the first day of August in every year, and shall make out one fair copy thereof, to be left with one of their number. They shall also forthwith cause notice thereof to be put up at three or more public places in their town or ward.

§ 7. Such notices shall set forth that the assessors have completed their assessment roll, and that a copy thereof is left with one of their number at a place to be specified therein, where the same may be seen and examined by any person interested, until the third Tuesday

of August; and that on that day the assessors will meet at a time and place, also to be specified in such notice, to review their assessments. It shall be the duty of the said assessors to meet at the time and place specified, and hear and examine all complaints, in relation to such assessment, that may be brought before them, and they are hereby empowered, and it shall be their duty, to adjourn from time to time, to hear and determine such complaints; but in the several cities and villages of this State the notice required by this section, shall conform to the requirements of the respective laws regulating the time and place for the revision of the assessments in said cities and villages, in all cases where a different time and place is prescribed by said laws, from that mentioned in this article.

§ 8. The assessor with whom such assessment roll is left, shall submit the same during the twenty days specified in such notice, to the inspection of all persons who shall apply for such purposes, and during the period, and one week day thereafter, that the assessors or tax commissioners are acting as a board of review, the assessment roll shall be open to the examination of the public at all reasonable hours, under the supervision of an assessor, tax commissioner, or his assistant clerk or representative, but the assessors or tax commissioners, when acting as said board of review, shall have such control and handling of the assessment roll as will enable said assessors or tax commissioners to perform their official duty as a board of review.

§ 9. Any person, or his representative, deeming himself disproportionately assessed by a valuation of his property at more than its full value, or by an undervaluation of the property of other persons in the assessment roll, may appear before the assessors or tax commissioners while sitting as a board of review, and may introduce the testimony of a competent expert, and the board of review may also call a competent expert, and an oath shall be administered to said witnesses by any member of the board of review. The witnesses shall be interrogated as to the real value of the property valued in the assessment roll and the building occupancy valuations thereon, and as to the real value of the claimant's property and valuation, and if it shall appear to the satisfaction of the board of review, that the claimant has been disproportionately assessed by a valuation above actual assessable value, they shall reduce said claimant's assessment, and if it shall appear to the satisfaction of said assessors or tax commissioners that the claimant has been disproportionately assessed by the undervaluation of the assessable property and valuation of other persons on the assessment roll, they shall raise said valuations of

other persons to the full, real assessable valuation, and thus give relief to the aggrieved party. The examination shall be in writing, or a printed form properly filled in, and shall be subscribed by the persons examined, and each of said experts, shall, in said examination, give his opinion of the per cent of the aggregate valuations on said assessment roll as compared with the full assessable aggregate valuation which ought to be thereon, and said written testimony, with the decisions of the tax commissioners or assessors thereon, shall be immediately forwarded by mail to the State tax commissioners at Albany.

§ 10. If any taxes on real estate or on lands for building occupancy valuation, assessed to a resident occupant, shall be returned as unpaid in consequence of such premises becoming vacant by the removal of the occupant before the collection of the tax imposed thereon, or in default of goods and chattels of the occupant or owner to satisfy such tax, the supervisor of the town in which such land was assessed shall add a description thereof to the assessment roll of the next year in a separate part thereof, and shall assess and charge the said land with the uncollected tax of the preceding years and the arrears of interest, and the same proceedings shall be had thereon in all respects as if it was the land of a non-resident, and as if such tax had been laid in the year in which the description is so added.

§ 11. Whenever the State comptroller shall have rejected any tax on account of any inaccurate or imperfect description of the lands on which such tax was laid, and shall have charged the county to which it shall have been credited, the supervisor of the town in which such lands are situated shall add to the next assessment roll of such town, in a separate part thereof, an accurate description of such lands; and, if necessary, may cause the survey of such lands at the expense of the town, and shall assess and charge said lands with the tax of the year in which the imperfect description was made, and the arrears of interest.

§ 12. Whenever lands, assessed in any city or village, or in any town where lands are liable to be sold by authority of law, in default of payment of taxes, shall have been imperfectly or inaccurately described, they shall be accurately designated and entered on the assessment roll, in a separate part thereof, by the assessors or tax commissioners, in the village, town or city where said lands are situated, for the amount of the tax of the year of the defective description and arrears of interest thereon.

§ 13. Whenever it shall appear to the assessors of any town, city, village or ward in this State that any land legally liable to a taxation

in said town, city, ward or village has been omitted from the assessment roll of the next preceding year, it shall be the duty of said assessors to enter said land in the assessment roll of the current year at the valuation and rate of taxation of the year in which said land was omitted, in a part of said assessment roll separate from the assessment and valuation of said land for the current year; and if, by any mistake in transcribing or copying the assessment roll of the preceding year, any lands have been placed on the assessment roll annexed to the warrant delivered to the collectors, at a valuation less than that actually appearing upon the original assessment roll, signed by the assessors, the assessors shall enter said lands in a part of the assessment roll separate from the assessment of the current year, upon a valuation equal to the difference between the actual value made by the assessors and the amount at which, by such mistake, they were placed upon the assessment roll, and at the rate per cent of the tax imposed upon said lands in said town, village or city in the year in which said mistake occurred.

§ 14. The board of supervisors of the county or city in which lands are situated, which have been re-assessed for non-payment of taxes, or for any inaccurate or imperfect description, or for errors, or assessed for omissions of previous year, as provided by sections 10, 11, 12 and 13 of this article, shall proceed to levy taxes on said lands to the amount of previously imposed taxes, or (as the case may be) to the amount of taxes on said lands, omitted the previous year, and shall charge said lands with the amount of the previous taxes and the interest in arrears thereof, or to the amount of the omitted tax of the previous year (as the case may be), stating the tax of each year separately, and shall direct the collection thereof, and such taxes and interest shall, for all purposes of this article, be considered as the taxes of the year in which the description shall be perfected.

§ 15. The whole amount of taxes levied upon the re-assessment of lands, or upon the omitted valuations of lands the previous year, according to the provisions of the preceding section, shall be deducted from the aggregate taxes to be levied upon said town or city for the current year, and none of the reassessed valuation or valuations assessed on account of omissions of previous year, shall be included in the valuations of the current year for the purpose of levying the tax of the current year; and said reassessed taxes and said assessed taxes for omissions of previous year, shall be collected by the same authority and in the same manner as the ordinary taxes of the current year are collected.

§ 16. when the assessors, or a majority of them, shall have completed their roll, they shall severally appear before one of the justices of the town or city in which they shall reside, and shall severally make and subscribe before such justice an oath in the following form:

We, the undersigned, do severally depose and swear, that we have set down in the foregoing assessment roll all the real estate valuations and all the building occupancy valuations of lands situated in the town, city or ward (as the case may be) and all the personal valuations, on property subject to taxation in said town, city or ward (as the case may be) according to proofs before us, and according to our personal examinations and estimates of the full assessable real estate, building occupancy and personal valuations, and our estimates of real estate valuations have been made at the full, actual market value of the land, if sold in convenient or suitable parcels and partly on credit; and also that every valuation in said roll is the full actual assessable value of the property assessed according to the deliberate judgment and decision of a majority of the assessors.

Said oath shall be written on said roll, signed by the assessors, and certified by the justice; and no assessment roll shall be valid unless it contains said oath before the final action of the board of supervisors thereon; and every assessor who shall willfully swear falsely in taking and subscribing said oath, shall be deemed guilty of, and liable to the penalties of willful and corrupt perjury.

§ 17. The roll, thus certified, shall, on or before the first day of September in every year, be delivered by the tax commissioners of the city of New York to the clerk of said city, and by the assessors of every other city, town or ward to the supervisors thereof, who shall deliver the same to the board of supervisors at their next meeting.

§ 18. The assessors, in the execution of their duties, shall use the forms and pursue the instructions which shall from time to time be transmitted to them by the State tax commissioner.

§ 19. If any assessor shall neglect or from any cause omit to perform his duties, the other assessors of the city, town or ward shall perform such duties, and shall certify to the supervisors with their assessment roll, the name of such delinquent assessor, stating therein the cause of such omission.

§ 20. If any assessor shall intentionally and knowingly approve of any assessment made at less than the real and actual assessable value of the property, or values assessed, he shall forfeit to the people of this State the sum of $500, and in default of payment shall be

imprisoned in the county jail until said amount shall be paid, in suit to be commenced by the attorney-general of the State, at the written request of the State tax commissioner, setting forth the reasons why he believes that said assessor is subject to said penalties or forfeiture; and if any assessor shall willfully refuse or neglect to perform any other duties required of him by this chapter, he shall forfeit to the people of this State the sum of fifty dollars.

§ 21. The board of supervisors of each county in this State, at their annual meeting, shall examine the assessment rolls of the several towns, wards or cities in their county, for the purpose of ascertaining whether the valuations in one town, ward or city bear a just relation to the valuations in all the towns, wards and cities in the county, and they shall increase the aggregate valuations of real estate and building occupancy valuations in any town, ward or city, by adding such sum upon the hundred as may, in their opinion, be necessary to bring up said valuations to the full assessable values; but they shall in no instance diminish the aggregate real estate and building occupancy valuations, in any town, ward or city, unless said valuations are found to be clearly above the full assessable valuations.

§ 22. The board of supervisors shall also make such alterations in the descriptions of the lands of non-residents as may be necessary to render such description conformable to the provisions of this chapter; and if such alterations cannot be made, they shall expunge the descriptions of such lands, and the assessments thereon, from the assessment rolls.

§ 23. They shall also estimate and set down in the sixth column of the assessment roll, reserved for this purpose, opposite the several sums set down as the real estate, building occupancy, and personal valuations, the respective sums in dollars and cents, rejecting the portions of a cent, to be paid as a tax thereon; provided, however, that the board of supervisiors of no county shall levy a tax without special authority of the legislature, on any town, to exceed one per cent on the total valuations on the assessment roll thereof, nor in any ward or city, to exceed two per cent on the total valuations on the assessment roll thereof; and no contract, obligation or liability, nor any number of contracts, obligations or liabilities, shall be entered into, made or incurred by any town, ward or city, or by the constituted authorities thereof, which, in the aggregate, shall exceed in any year the amount that may be realized by taxes at the limitation of rate defined in this section, after deducting from said taxes the amount of the liability of the town, ward or city, in each year, for maturing

interest or principal of bonded indebtedness, and for the State and county tax.

§ 24. The said board of supervisors shall also add up and set down the aggregate valuations of real estate, building occupancy and personal valuations, in the several towns, wards and cities, as corrected by them; and cause their clerk to transmit to the Comptroller and State tax commissioner a certificate of such aggregate valuations, showing separately the aggregate real estate, building occupancy and personal valuations in such town, city or ward, as corrected by the board.

§ 25. They shall cause the corrected assessment roll of each town, ward or city, or a copy thereof, to be delivered to each of the supervisors of the several towns, wards or cities, who shall deliver the same to the clerk of their city or town, to be kept by him for the use of such city or town.

§ 26. The board of supervisors of the several counties in this State shall cause the corrected assessment roll of each town, ward or city in their respective counties, or a fair copy thereof, to be delivered to the collector of such, town, ward or city, on or before the fifteenth day of December in each year.

§ 27. To each assessment roll so delivered to a collector, a warrant, under the hands and seals of the board of supervisors, or a majority of them, shall be annexed, commanding such collector to collect from the several persons named in the assessment roll, the several sums mentioned in the last column of such roll, opposite to their respective names.

If the warrant be directed to the collector of a town, it shall direct the collector, out of the moneys so to be collected, to pay:

1. To the (town superintendent) of common schools of his town, such sums as have been raised for the support of common schools therein.

2. To the commissioners of highways of the town, such sums as shall have been raised for the support of highways and bridges therein.

3. To the overseers of the poor of the town, if there be no county poor-house, or other place provided in the county for the reception of the poor, such sum as shall have been raised for the support of the poor in such town.

4. To the supervisor of the town, all other moneys which shall have been raised therein, to defray any other town expenses; and

5. To the treasurer of the county, the residue of the moneys so to be collected.

If the warrant be directed to the collector of a ward, it shall direct the collector to pay all the moneys to be collected, after deducting his compensation, to the treasurer of the county.

In all cases, the warrant shall authorize the collector, in case any person named in the assessment roll shall refuse or neglect to pay his tax, to levy the same by distress and the sale of the goods and chattels of such person; and it shall require all payments therein specified, to be made by such collector, on or before the first day of February then next ensuing.

§ 28. As soon as the board of supervisors shall have sent or delivered the rolls, with such warrants annexed, to the collectors, they shall transmit to the treasurer of the county, an account thereof stating the names of the several collectors, the amount of money they are respectively to collect, the purposes for which the same are to be paid; and the county treasurers, on receiving such account, shall charge to each collector, the sums to be collected by him.

§ 29. Whenever the laws respecting cities shall have directed the moneys assessed for any local purpose, to be paid to any person or officer other than those named in the preceding twenty-seventh section, the collector's warrant may be varied accordingly, so as to conform to alteration.

§ 30. Whenever any board of supervisors shall make out any tax list and warrant, they shall not add thereto the fees of the collector, if fees are allowed said collectors, by law, but such fees shall be paid and collected in the manner prescribed by laws providing for the collection of taxes, and all existing laws for the collection of taxes are hereby re-enacted as far as applicable to all the taxes assessed according to the provisions of title one and two of this chapter.

§ 31. When the tax on any real estate, including lands for building occupancy valuations, shall have been collected of any occupant or tenant, and the owner, by agreement or by force of law, ought to pay such tax or any part thereof for himself or for his tenants, other than the tenant or occupant who shall have paid said tax, said occupant thus paying said tax shall be entitled to recover by action the amount which such owner ought to have paid, or to retain the same from the rent due or accruing from him to such persons for the land so taxed.

§ 32. The assessors or tax commissioners in every city in this State shall keep in their office, in suitable books to be provided for that purpose, a record of all information which they may receive or be able to obtain in respect to the taxable property, and of all changes in the divisions of real estate of which they can obtain informa-

tion, and shall file all assessment rolls. The books, records, maps and papers mentioned in this section, are public records, and must, at all reasonable hours and times, be open to public inspection.

## ARTICLE FIFTH.

### *Of the State Tax Commissioner, his Duties, and the Equalization of the State Tax.*



SECTION 1. There shall be nominated by the governor, and appointed by and with the advice and consent of the Senate, an officer by the name of the State tax commissioner, who shall hold his office for three years, from the first day of April after his appointment and confirmation by the Senate, and until his successor shall be duly qualified.

§ 2. The said State tax commissioner shall have power to administer an oath and compel the attendance of witnesses before him, and to make all such examinations of persons and papers as he shall deem necessary to enable him to form a correct opinion of the full value of every property or assessable value on any assessment roll in any town, ward or city of this State, and the State, town, county and city officers shall furnish him with all information belonging to, or connected with their respective offices, and copies of all papers in their

various offices which said State tax commissioner may require of them in the discharge of his duties.

§ 3. The said State tax commissioner shall have power to appoint a deputy, who shall receive a salary of per annum, and who shall have the same powers as the State tax commissioner in administering oaths to witnesses, and taking testimony in writing, and collecting information for the consideration of the State tax commissioner.

§ 4. The State tax commissioner shall receive a salary of per annum, and in addition to his annual salary he and his deputy shall receive, when absent from the city of Albany, in the performance of their official duties, full compensation for expenses and disbursements, and including all railroad and other fares actually paid, and the sums of said bills, including the incidental expenses and disbursements of the office shall be verified by affidavit by said commissioner and his deputy, and shall be presented to the comptroller.

§ 5. The State tax commissioner or his deputy shall visit officially every county in the State, at least once in every year, and shall examine the records of transfer of real estate, and when he deems it necessary, may take a memorandum of the considerations of transfer of real estate; and the said commissioner shall prepare annually a written digest of such facts as he may deem most important to enable him to equalize all taxes on lands and building occupancy valuations in all the counties throughout the State, and to enable him, in all respects to discharge the duties of his office.

§ 6. The State tax commission shall be invested with the power of equalizing the building occupancy and real estate valuations between the several counties of this State for the purpose of establishing the just relation of said valuations between the several counties, and he shall commence examining and revising the real estate, the building occupancy and personal valuations of the several counties as returned to his office, and to the office of the comptroller at the city of Albany, on the first Tuesday of September, in each year, and fixing the aggregate amount of assessment for each county, on which the comptroller shall compute the State tax. He shall increase the aggergate real estate and building occupancy valuations in any county, by adding such sum as, in his opinion, may be necessary to bring up said valuations to the full assessable value, but he shall in no instance diminish the aggregate real estate and building occupancy valuations in any county unless said valuations are found to be clearly above the full assessable valuations. A statement of the amount of assessment for each county, as fixed by him, shall be certified by him, and a certified

copy thereof deposited in the office of the comptroller, as soon as completed, and before the tenth day of October in each year. The comptroller shall immediately ascertain from the assessment, the proportion of State tax each county shall pay, and send a statement of the amount by mail, to the county clerk, and the chairman and clerk of the board of supervisors of each county.

If the name or residence of the chairman or clerk of the board of supervisors shall be unknown to the comptroller, he may inclose such statement in an envelope, addressed to him by his name of office, and directed to the county town of the county. The county clerk shall file the statement received by him in his office, and immediately send a copy thereof to the chairman of the board of supervisors of the county.

§ 7. The amount of State tax which each county is to pay, as so fixed and certified by the comptroller as aforesaid, shall be raised and collected by the annual collection of taxes in the several counties in the manner now prescribed by law.

§ 8. The said State tax commissioner, before entering upon the duties of his office, shall take and subscribe the usual oath of office before the secretary of State or a justice of the supreme court, and he shall administer the usual oath of office to his deputy before he shall enter upon his duties, which oath shall be subscribed and filed in the comptroller's office.

§ 9. The State tax commissioner shall, from time to time, issue instructions to the assessors and city tax commissioners in all the cities, wards and towns of the State, instructing them as to manner of making assessments, and warning them of the penalties of non-performance of duty in failing to assess property at full valuation; and whenever he deems that he has information that any assessor has intentionally and knowingly undervalued or approved of any undervaluation while acting as a member of a board of review, he shall request the attorney-general, in writing, to commence a suit against said assessor for the penalty imposed by law.

§ 10. The said State tax commissioner shall preserve all books, papers and documents pertaining to his office, and including all testimony of experts as to the actual value of property on the assessment roll in any town, as compared with the assessed value of the year to which the testimony may relate; and said papers and records shall be deemed public records, open to examination, at all reasonable times, by the public.

§ 11. Any supervisor may appeal in behalf of the town, city or ward which he wholly or in part represents, to the State tax commis-

sioner, from any act or decision of the board of supervisors in the equalization of assessments and the correction of the assessment rolls under the provisions of title second of this chapter. Such appeal shall be brought by serving a notice, within ten days after the corrected assessment rolls shall be completed by the board of supervisors on the chairman and clerk of said board, and also by filing such notice in the office of the clerk of the county, together with the affidavit of the supervisor so appealing, that in his opinion injustice has been done in such town, city or ward by the act or decision appealed from. The State tax commissioner shall hear the proofs of the parties, which may be presented in the form of affidavits or otherwise, as he shall direct; after hearing such proofs, he shall determine whether any, and if any, what deduction ought to have been made from the corrected valuations of such town, city or ward to bring down said valuations to the real but full assessable valuations; and he shall determine in what town, city or ward of the said county the valuations on the equalized assessment rolls were below the full real value; and in the assessment of and collection of taxes of the next following year, the town which has been, according to the proofs, disproportionably taxed, shall be credited with the excess or disproportionate amount of tax, and the same shall be levied and collected in just proportions from the other towns and cities of the county which were not sufficiently assessed the previous year, as compared with the aggrieved town, city or ward.

§ 12. Chapter 312 of laws of 1859, passed April 14th, 1859, and all other laws inconsistent with the provisions of title one and two of this chapter, shall be inoperative after the first day of January, 1873, when the new method of assessment and taxation, established in the amended provisions of said titles one and two of this chapter, shall take effect; but the State tax commissioner shall be appointed before the first of September, 1872, when he shall commence to receive salary, and when he shall assume the duties of his office in reference to the assessment of taxes for 1873, and the assessors and tax commissioners of cities may commence to make the new assessment herein provided for after the first day of September, 1872.

Respectfully submitted.

DAVID A. WELLS.
EDWIN DODGE.
GEORGE W. CUYLER.

To His Excellency, JOHN T. HOFFMAN,
*Governor of the State of New York.*

ALBANY, *February*, 1872.